

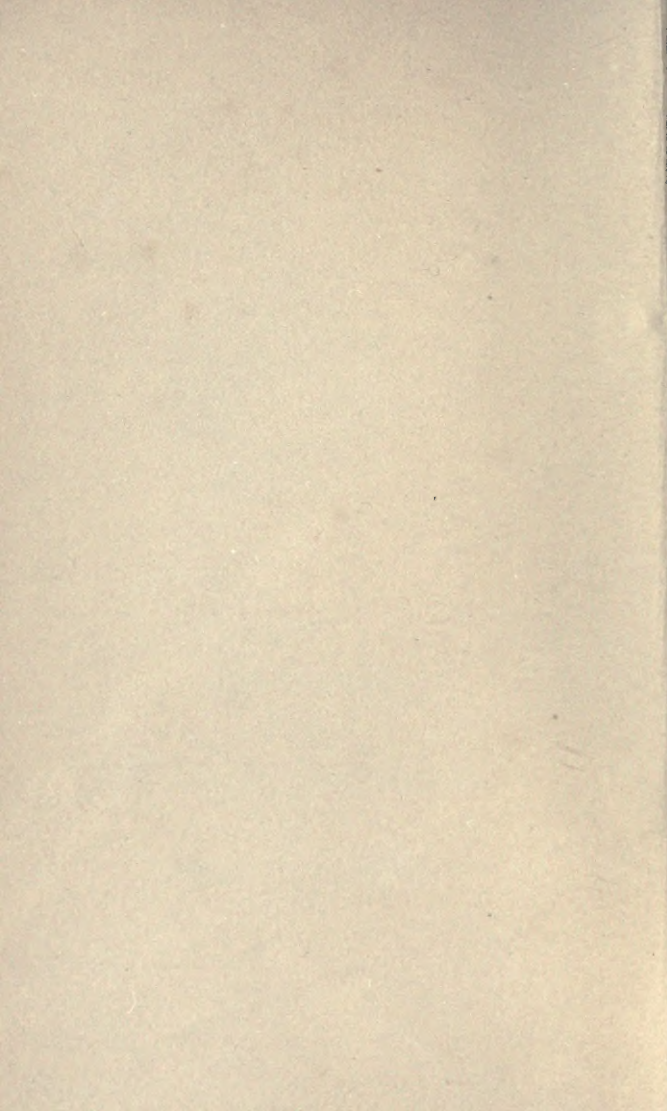
SCINTILLAE  
JURIS  
AND  
MEDITATIONS  
IN THE  
TEAROOM

BY THE HON. MR.  
JUSTICE DARLING



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SCINTILLAE JURIS  
AND  
MEDITATIONS IN THE  
TEA ROOM



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THE BUREAU

## AUTHOR'S NOTE

**T**HESE LITTLE BOOKS WERE published anonymously and have long been out of print ; they are now, for the first time, published together, as they are in some sort complementary. Author's  
Note

It has been thought well to indicate who they were whose decisions are travestied in the chapter "Of Judges"—for they have all passed away, and their idiosyncrasies are no longer familiar to the frequenters of the Courts.

"Meditations in the Tea Room" were published some years before their author entered the House of Commons.



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Law  
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SCINTILLAE JURIS \* BY THE  
HON. MR. JUSTICE DARLING  
WITH PREFATORY NOTE BY THE  
RIGHT HONBLE. SIR EDWARD  
CLARKE, K.C.

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**SIXTH EDITION**

## PREFATORY NOTE

**T**HE PUBLISHERS HAVING Prefatory  
Note  
desired a Prefatory Note to this new edition, my friend the author of "Scintillae Juris" and the "Meditations in the Tea Room" has asked me to write a short introduction to the volume in which these two books appear together.

Whether any such introduction is needed, and whether I am the proper person to write it, were questions for his decision. His judgments are very seldom overruled, and in this case I willingly submit. If any words of introduction are to be spoken there is perhaps some fitness in my selection to discharge that pleasant duty. For he and I have for many years been comrades in both professional and political life, and have both refused to allow the claims of politics or law to exclude us from the delights of literature.

The lines in which Sir Charles Darling described Mr. Justice Talfourd may not unfitly be applied to himself :

"Judge, but not merely a Judge—  
though learned, not lawyer entirely :  
Orator, maker of laws, had he been—  
likewise maker of verses."

Prefatory    These two books represent the out-  
Note    look upon public affairs and upon the  
work of our courts of justice of a  
shrewd and well-stored intellect, en-  
dowed with a quality which Talfourd  
did not possess, the dangerous and  
delightful gift of humour.

"*Scintillae Juris*" was published a  
good many years ago, and has for  
some time been out of print; copies  
being only obtainable of late at a good  
deal of trouble and expense. Some of  
its contents—the five judgments given  
in its early pages—cannot be enjoyed  
by the younger lawyers among us as  
they were by those who were familiar  
with the judicial utterances so pleas-  
antly satirised. When they first  
appeared the names now given at the  
foot of the page were quite unneces-  
sary, and each of the victims recognised,  
except in his own case, the truth of the  
caricature. But all the rest of the  
*scintillae* are as bright as ever, and  
the pages on examination and cross-  
examination, and witnesses, and evi-  
dence, contain hints as to the conduct  
of a case which any intelligent young  
barrister will find very useful.

The "*Meditations in the Tea Room*,"  
although first published some years

before the author entered the House of Commons, are strongly tinged with the

Prefatory  
Note

cynicism which comes naturally to one who spends years as a private member of the House of Commons, a place where the opportunities for public usefulness seem so large, and where the actual results of hard work are so very small. "Sir," said Mr. Disraeli to a new member who was presented to him, "you will find the House of Commons a very dull place—with its brilliant moments." Those brilliant moments are indeed delightful, and sometimes come unexpectedly to reward the diligence of the patient sitter through the hours of dulness; but when they have been foreseen the chamber is so crowded that no one but the Speaker and the Sergeant-at-arms has a comfortable seat. No wonder that there are scoffers in the smoking room and cynics in the tea room. The author of these Meditations has here set down, in less than a hundred pages, many wise and weighty suggestions on political topics. I do not say, as is so commonly said of books, that they will repay perusal, for where perusal is itself a pleasure no repayment is needed, but I commend them to all students of the



Prefatory larger questions of political science as  
Note worthy of careful and deliberate consideration. They are suggestions which well deserve to be supplemented and applied by the readers to whose friendly companionship I now introduce this book.

EDWARD CLARKE

Peterhouse, Staines

*June 1914*

## AUTHOR'S PREFACE

"*EST OPERAE PRETIUM DU-* Author's  
*plicis pernoscere juris naturam,*" Preface  
says Horace. I believe he wrote thus concerning soup, but his remark applies very well to the kind of *jus* served out in our Courts of Law.

The following trifling essays are intended for no more than mere hints to facilitate the compounding of our *duplex jus* according to the most approved recipes. They are, like other culinary directions, designed for the information of the cooks only, and not for the enlightenment of those who are to partake of the broth.



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## WITH LAWS WE HAVE Of Laws

small concern until they have been contemned, or set at nought. Of the law of gravitation we know that it exists, and the same of the law of entail, yet a practical lawyer has little more occasion to inquire into the reasons which led to the passing of the statute *De Donis* than an artilleryman has to read Genesis. To know how restraints came to be imposed helps us but little to remove them; and a barrister spends his time to better purpose when he observes the conduct of men who infringe laws than when he studies the motives of those who make them.

It has often happened that eminent advocates have been poor lawyers, and great jurists bad advocates; and this need not seem strange to us, if we consider that many men have broken a hundred laws, who, nevertheless, have not understood one. It is in getting a verdict, as in getting anything else; you will obtain it the more easily if you know of no reason why you should not.

As he who should write on military affairs would speak little of quarrels, and much of weapons, strategy, and

Scintillae tactics, I shall devote but a short space  
Juris to the examination of laws, seeing that  
they are to be regarded as a sort of  
*corpus vile* to be tugged hither and  
thither, like the body of Valerius,  
when

. . . "Titus dragged him by the foot,  
And Aulus by the head."

Still, as Macaulay informed us of one  
or two matters relating to Valerius—  
his home, and political sympathies—I  
shall not neglect the nature of laws  
altogether.

And, first, let us notice that all laws,  
even the most democratic, are designed  
to prevent equality—which is chaos.  
For, as before the elements were sub-  
jected to law, before the waters and  
the land were divided from one another,  
all was but mud, so, were it not for our  
customs and statutes, society would  
have no foundation—as we may say ;  
no dregs or "*residuum*"—as it has  
pleased a prominent politician to de-  
nominate those who cannot return him  
to Parliament. When we call people  
*base*, we intend not to compliment  
them, but we then recognise their  
value ; which is to us what the tortoise,  
on whom stands the elephant who

carries the world, is to the heathen Of Laws philosophy which invented him.

Foundations, being indispensable, become proud of their position. The meanest hind in this kingdom delights to proclaim that "an Englishman's house is his castle"; yet what is this but saying that, for himself, he is at liberty to die in a ditch, if it be not roofed over.

To say I may possess this or that, is to forbid all the world beside to touch it till I am willing to give it away. It is like the amusement of putting a piece of cheese on the nose of a dog, who, though all impatient and hungry, waits till I give him leave before he ventures to swallow it.

The world has long ago agreed that for each man to be able to say of *everything*, "This is mine," is not nearly so enjoyable as for all to be allowed to say of *something*, "This is not thine"—even though the portion separately possessed be of the smallest. One of two tenants in common of a thousand acres owns every part of that thousand, yet he has not, I am sure, nearly so much pleasure from his land as he who is separately possessed of five hundred—for although he can say, "It is my

Scintillae own," he cannot proceed, "and nobody  
Juris else's." The pleasure of having property lies more in the excluding from it of others than in the occupation of it by ourselves. Few are they who wish to till the soil, but many desire to "nationalise the land" for the joy to be got in expropriating those who now hold it.

And herein lies the chief enjoyment to be had from the making of gifts ; that, whereas the quiet and continued possession of anything is not a striking manner of asserting dominion over it, the fact that you part with any property proclaims that you possess it, and your bestowing it on some one of your choice involves the pleasure of refusing it to all whom you do not endow.

As every enactment must, of necessity, be a check upon some passion, or predilection of human nature, it is prudent not to attribute much force to a new law, but to wait until it has been assented to by judicial interpretation before one entertains great respect for it. There never yet was a tyrant who did not rule by the submission of his subjects. Majorities can only be enslaved when they prefer servitude to resistance ; and it is to no purpose to command that men shall do what they

have not a mind to. Let it be decreed to-day that all men shall be just, and by to-morrow it will have been decided that they are so "within the meaning of the Act"; for, though the contrary would be the truth, humanity could not bear to pronounce it.

The general popularity of the laws may well astonish us, when we remember that they are a restraint upon, and constant menace to, us all. They are, indeed, a kind of whips; and would, perhaps, not be endured by the community, were it not for that arrangement of ours, by which, when one of the public is to undergo the pain of a flogging, twelve of his fellows have the pleasure of laying on the lash.

I cannot avoid noticing here an error into which they fall who complain of the *uncertainty* of law, as though it were a weakness. Rather should it be considered the chiefest of all sanctions; for trial is often more dreadful than punishment, as sickness is painful, while the article of death is no more than the cessation of pain. If we examine closely, I believe we shall find that all men fear to be ill, and to be dead, but that no one fears dying. Though many people do voluntarily slay them-



Scintillae selves, yet they are always accounted  
Juris mad ; and that not because they have  
undergone the pain of extinguishing  
life—for they may have fled from the  
toothache—but because they have  
rushed into another state of existence,  
where they know not but they may be  
troubled with ten toothaches at once.

If death were simply non-entity, all  
would seek it who had less enjoyment  
than that which has no feeling ; thus,  
unless a man delighted in unhappi-  
ness—which I think some do—he had  
better kill himself painlessly, to escape  
infelicity, than live painfully to endure  
it. We see then that some sanction is  
necessary to prevent the depopulation  
of a world so full of misery as this ;  
and we find that the sanction provided  
is *uncertainty*.

This brings us back—after a cir-  
cuitous, but not unprofitable, voyage—  
to our *terminus a quo* ; for uncertainty  
is the direct result of ignorance, and  
we have seen that the continuance of  
life itself depends mainly on our partial  
want of knowledge—and that which  
preserves our existence promotes also  
the observance of our laws. Many  
would dare to do wrong, did they know  
for certain what would follow.

THEY ARE GREATLY MIS- Of Inter-  
taken who refuse to admit—national  
as very many do—that there is, properly  
speaking, no such thing as Inter-  
national Law. The fact is, that there  
is a Code recognised all the world over,  
in accordance with which the Judges  
(i.e., the Sovereigns) and the jurors  
(i.e., the peoples) of every country  
invariably give their decisions.

For the convenience of those who  
may have in their law libraries only the  
ten commandments, and perhaps some  
odd volumes by Grotius or Pufendorff,  
I will here set out the whole of this  
International Code in its integrity :

*"La raison du plus fort est toujours la  
meilleure."*

The decided cases illustrating this  
doctrine are as consistent as they  
are numerous—and therefore one or  
two citations only may suffice. See  
*Bianchi v. Neri* ; *Indian and African  
and American Cases*—also *Angli v.  
Angelos* ; *Foreign Reports, passim*.



## IT IS A NATURAL RESULT OF Of Judges

the laws not being understood by those who make them, that persons of legislative capacity should be employed in their interpretation and improvement. Wherefore, it is expedient to understand the decided cases ; but this cannot be done without examining closely the personal characteristics of those who decide them.

This is admitted by the Judges themselves, who, though they would swoon or commit you, should you attempt to read the report of a speech in Parliament, in order to show what is called the intention of the legislature, will, nevertheless, in dealing with a reported case, frequently say, " Ah, I happen to know that my learned brother lived to repent of that judgment. It does not express his later views " ; or, " My brother was hardly orthodox in railway cases."

Now, as in the Parliament there are members whose contributions to the statute book are all of one sort, so it is with the legislation of the Bench.

" 'Tis with our *judgments* as our watches,  
none  
Go just alike, yet each believes his  
own."

Scintillae     Any one who will may satisfy him-  
Juris     self, by taking down a volume of re-  
ports, old or new, that any given Judge  
will run in a particular direction if he  
fairly can.

There are, however, so many who will not give themselves the trouble of looking into the books, that I shall here present a judgment or two, which I have extracted from the mass, as being peculiarly characteristic of the Judges who delivered them. It is, I think, unnecessary that I should furnish references to the sources from which these examples are drawn, since they must already be familiar to all who have the regular reports.

The following judgment was delivered by a learned Judge\* in *Thimble-rig v. Hookey* :—

“ This action was brought to recover damages for having been called a *villain*—and the Plaintiff alleges, somewhat boldly as I think, that on that account his friends have deserted him. But I hope I may be allowed to say that, in my humble opinion, such of his acquaintance as I had the advantage of seeing, when they came as witnesses at the trial, would rather cease to associate

\* Lord Coleridge, L.C.J.



with the Plaintiff if they thought he did Of Judges  
not deserve the title the Defendant  
had bestowed upon him than if they  
believed he did ; and besides, I think  
—I speak for myself—I think it can be  
no loss to any man, but rather a distinct  
gain, to be deprived of the consort of  
such friends as the Plaintiff appears to  
have been—ahem !—*blessed* with.

“ As to the term *villain* or *villein*—  
for it nowhere is shown which spelling  
the Defendant intended—let us con-  
sider whether, as applied to the Plain-  
tiff, it is a defamatory word or not.

“ A *villein*, if I have not forgotten my  
Oxford learning, was one who did odd  
jobs—and so does the Plaintiff, *very*.  
A *villein* carried food to the pigs—but  
the Plaintiff is a tout, and supplies  
sporting intelligence to the vulgar. The  
*villein* was dependent on a lord, and was  
his ‘man’—the Plaintiff hangs on to  
several noble peers, yet I hardly call him  
a man—‘*Homo sum : humani nihil a me  
alienum puto*’ ; but as to what I think  
of the Plaintiff—well, I *say* nothing.

“ Now, to put a, perhaps, somewhat  
extravagant hypothesis, even if the  
Plaintiff be not a villain, I cannot see  
evidence that the Defendant called him  
so of malice, for may he not well have

Scintillae been deceived by the Plaintiff's appearance?  
Juris

"I am far, very far, from being satisfied that the Defendant maliciously called the Plaintiff what he did eventually call him. His conduct was very probably the result of sincere belief, and—if I may venture to use the words of a poet whom I, perhaps, should not name—

'And gentle wishes long subdued,  
Subdued and cherished long!'

"I shall assuredly not disturb the finding of the jury; not, I would say, because I have more than a becoming respect for verdicts, but because, all things considered, I have even less for the Plaintiff.

"It has been said at the bar that by this decision the Plaintiff will lose his character. Well, then, be it so. I can only say, in his own interest, that I sincerely hope he may; better were it to have no character than his present one.

"It has also been pathetically observed that he will be made a beggar; but, when that time has arrived, no one will any longer have a right to say—nor do I say it now—that his property

consists of money which he has dis- Of Judges  
honestly come by.

"The Defendant must have judgment, with costs, if he can get them."

A case in the books, much less noticed than I think it deserves to be, is that of *Gules v. Saltire*, which resulted in a judgment so interesting and important as to be a sufficient excuse for my here reproducing it.

*John Sinister* had died, leaving a will which contained a bequest in the following words :—

"*I give and bequeath my tortoise-shell snuff-box, and one dozen of my silver teaspoons—videlicet the fiddle-pattern ones—to my father.*"

Now *John Sinister* was indebted for his existence to *William Saltire*—the Respondent—and a certain *Mary Chevron*; but, whether from conscientious objections, or forgetfulness, or pressing engagements, I know not, it happened that these two persons had never been married.

The question which—having first been declared by a Vice-Chancellor to be no question at all, and then decided in favour of *William Saltire*—at length came before the Court of Appeal at

Scintillae Lincoln's Inn, was, whether *Saltire* was  
Juris entitled to the said goods as being the  
*father* of the testator.

The following judgment was delivered :— \* “ Immoral, but not unusually immoral, has been the conduct of *William Saltire* ; filial, legitimately filial, the testamentary behaviour of *John Sinister*.—A son born in wedlock is enjoined by the law to support his father, if support be necessary to his declining years.—But the solicitous generosity of *Sinister* continues beyond the threshold of the tomb ; and if *Saltire* must go without this filial aid, it is because, by reason of his own unkind neglect, his genealogical tree is but *platanus coelebs*, and must stand alone, till, covered with the hoary frosts of age, and beaten by the adverse winds of litigation, it fall, a ligneous ruin, to the ground !

“ It is fully admitted that if *Saltire* be in law the father of *Sinister*, he is then entitled to enjoy his substance ; just as Saturn devoured his children, and as many an old man since has lived upon his son. But is the Respondent the *father* of the testator ? I declare, unhesitatingly, that he is not.

\* Sir W. M. James, L.J.

"A man born in such an informal Of Judges way as *John Sinister*, is said by the law to be *nullius filius*; and I, if he be the son of nobody, find it not less difficult to point out the father of such a man than to put my finger upon the mother of Pallas Athênê.

"I have read that it is the custom in the Empire of Cathay to ennoble his ancestors where we should make a man a peer. Suppose the testator—being already *nullius filius*—to have been a Chinaman as well. Whose name then would the vermilion pencil have traced upon the roll of that antediluvian nobility? Would *William Saltire* have taken his place amongst those posthumous peers?

"It is plain, it is palpable, that we are forbidden by the law to say that the testator was the *son* of any man. 'The common law only taketh him to be a son whom the marriage proveth to be so,' to quote the words of a treatise whose high authority is hardly equalled by its even higher antiquity.

"Here, however, there was no marriage at all; and, therefore, I am of opinion, clearly and distinctly, that it is not allowable to say that *John Sinister* was a son. Consequently he was not

Scintillae even *nullius filius*, but rather *nullus Juris filius*. Now, though he clearly was not a son, I must proceed to consider whether, in law, he had a father.

"It is by no means sufficient that *William Saltire* was a father, as a conscript father, or a father of lies—colloquial expressions prove nothing but their own utter nonsense—he must have been *John Sinister's* father in law ;\* but, if this relationship were established, *Sinister* would be *Saltire's* son, and this is impossible, for he is not a son at all, as we have already very sufficiently seen.

"It is in no way material to inquire whether, in these circumstances, it was possible for the testator to have had a mother ; but I am bold to declare that, were it necessary, I should most certainly hold that he was an orphan *ab initio*.

"It is gratifying, most gratifying, to know that *John Sinister* has found the conclusion to the long dilemma of his life, and that now, after the close of his

\* The learned Judge's language is here, I am afraid, open to misapprehension. This position certainly cannot be maintained if we insert two hyphens—and perhaps is not unassailable if we omit them.



isolated existence, he at last reposes in Of Judges the arms of his only legitimate parent—his mother *Earth*.

"The decision of the Court below cannot be sustained. Our judgment is for the Appellant—with the usual consequences."

I shall now give a few passages from a certain judgment delivered in the well-known case *Graviped v. Curricie*. A man had been knocked down and run over by a horse and cart, wherefore he brought his action for damages.

After making a terrible exhibition of the pleadings, and indulging in some pleasing recollections of special demurrers, the learned Baron \* proceeds thus :—

"The Plaintiff must have been in the way, otherwise he would not have been run over. Now, the cart was going very fast, or it was not. If not, the Plaintiff should either have got out of the way, or never have got in. I care not which ; nor need any one else. But, if it were going at a great speed, what must be the cause of that ? Why, I say why—because it is certain—why,

\* Mr. Baron Bramwell, afterwards Lord of Appeal.

Scintillae the impulsiveness of the horse, for no  
Juris vehicle can draw itself. Now, is the Defendant to be held responsible for that? There is no evidence that he caused it; as by tying a firework to the animal's tail—which indeed was a short one; or by driving with a goad, or trident, for a whip. The impulsiveness results from the horse's being well fed; and, if Defendant did not feed it well, some one would certainly prosecute him; not that I mean to say the 'Society for Preventing Cruelty to Animals' are here responsible in damages; by no means.

"But, again; is not this a case of *vis major*? Is it to be said that Defendant is bound to hire a driver able to hold his horse, even when it is most restive? Is a mariner negligent who fails to propel his vessel against the wind? Is a soldier to blame who cannot subdue an enemy stronger than himself? If so, a Defendant would lose his action though he had employed Nelson to sail his ships, and it would be negligent to give the command of an army to a Napoleon. As well might it be said that the Plaintiff's Counsel has argued badly because he fails—as surely he will to get my judgment in his favour.

Yet he may have argued his best— Of Judges though I hope not.

"A horse does not go too fast unless he cannot be pulled up; and, if he cannot be stopped, how is it negligent to let him run?"

"Moreover, if the horse came at a high speed, there must, of course, have been much noise; and then the Plaintiff ought to have taken, or kept, himself out of danger.

"I think, then, that in this action, the Plaintiff cannot recover, though in the hospital he has done so—which is another reason against him; for surely as *nemo bis vexari debet pro eadem causa*, so no one should recover twice for one injury.

"Oh yes; I wish to add that none of my brothers agree with this judgment."

In the leading case under title *Warranty—De Fraude v. Snafflebit*—is to be found the following most exhaustive and authoritative exposition of the law on the subject: \*

"The question at present awaiting our decision is one of the very highest importance, and of the most general

\* Sir Fitzroy Kelly, C.B.

Scintillae interest to the public. It is whether a  
Juris horse warranted by the Defendant to  
the Plaintiff as being 'quiet in harness,'  
were so, or whether it were not.

"It appears from the evidence given at the trial—and which I now hold in my hand—that, immediately after the purchase of the quadruped in question, that is to say, on the twenty-ninth day of February of last year—and I may here say that I have, beyond doubt, ascertained this to have been what is usually denominated 'leap year,' which shows that the day alleged is not what I have heretofore called an 'impossible date'—the Plaintiff, with due caution and circumspection, proceeded to attach the horse to his cart, for the purpose of returning home, having been lucky enough to dispose of his own horse at the fair. Now, I find that, immediately upon an attempt being made to put the bridle over his ears, the horse threw out his heels, and kicked the Plaintiff's groom—who must, therefore, have been present—in the left eye; or rather in the place of that organ, for he was one '*cui lumen ademptum*,' as, fortunately for him, he had already lost it by reason of an accident when shooting wild

ducks in Lincolnshire ; a dangerous, Of Judges and it would seem an unprofitable, pursuit.

"The Plaintiff, then, having first, very properly, inverted the collar in the ordinary manner, seems next to have tried to put it over the horse's head (purposing, I imagine, to subvert it, or turn it round, as soon as he had done so), and I should hold the collar, whichever end might be uppermost, to be harness, within the meaning of the warranty ; but the horse, actuated by some motive of which, not having felt it, I am unable to judge, bit the Plaintiff on the ear, either the right or the left, I for the moment forget which (nor indeed is it very material for the purposes of this case to determine which ear was so injured, nor, for that matter, to ascertain whether the Plaintiff were bitten at all). After this display of his intractable temper, and his objection to conform to the conventionalities (so to speak) of equine existence, the horse galloped away—though in what direction does not appear—and has not since been discovered, or indeed heard of in any way, from that day to the present.

"Now, as I have already remarked,

Scintillae the matter to be decided is, was he, Juris that is to say, the horse, *quiet in harness*? And here, if, as is not the case, the law required the Defendant to prove the affirmative of that proposition, I should, most unhesitatingly, hold and forthwith proceed to declare, that he was not : and that not because he is proved in any way whatever, directly or indirectly, to have misbehaved himself, positively or negatively, in harness, but because the evidence, which I have already shortly summarised, does not satisfy me that he was ever quiet *in harness*, or that he would have been so should he at any time have happened to be there.

“ But the Plaintiff must prove affirmatively, to our satisfaction, that the horse was not *quiet in harness* ; and in order to do this it is advisable, and I may say it is absolutely necessary, in the first place, to show that he was harnessed, and next that he was unquiet afterwards, and while still wearing the harness. That he was most fractious, unmanageable, and recalcitrant out of harness, I hold to be demonstrated beyond all manner of doubt, question, cavil, or dispute. Yet, had he once been got into his trap-



plings, *non constat* but he might have Of Judges conducted himself soberly, quietly, and decorously, according to every rule of good behaviour, be it equine or otherwise.

"Then can it be said, either truthfully and honestly, or captiously, critically, or speciously, that the horse ever was *in harness* after the Plaintiff bought him ?

"I do not think that it can, having due regard to the peculiar circumstances of this case, and remembering the fact that the bridle did not touch his ears, or possibly only one of them, and that the collar never completely surrounded his neck, and, perhaps, was never put on beyond his nose. Had he been unquiet when habited, and indued in part of his harness only, I should not, peradventure, have held that to be sufficient to entitle the Plaintiff to our judgment in this case. But that question does not here arise ; nor unless the horse be—by means, as I would suggest, of a lasso, or by 'creasing,' or in some other manner practised by the Mexicans—again arrested, and reclaimed from its present wild and lawless state, is that question, at any time, now or hereafter, likely to present

Scintillae itself, here or elsewhere, before us for  
Juris our consideration, in any form, fashion,  
or proceeding whatsoever.

“With regard to a case, which, during the argument of this question, was put by my learned brother, as to the effect of a warranty of this nature given to him on his purchasing a pair of carriage horses for a Duchess, let me say, once for all, that I regret the introduction of hypothetical cases involving supposed facts so extremely improbable in their nature as to amount almost to complete impossibilities. It is obvious that should my learned brother be acquainted with a Duchess, or even a Marchioness—which I by no means admit to be likely—and should she request him to choose for her a pair of horses, or indeed only one, it is obvious, I say, that no one can pretend to foresee the consequences of such a series of remarkable events.

“Wherefore, let the judgment of this Court be entered for the Defendant in this cause—and so be it.”

The next, and last, example, which I shall present, is a singularly instructive one. It differs, however, from the others in this, that it will not be found

in any of the reports, being, indeed, a Of Judges summing up of the evidence in an action for breach of promise of marriage. I do not set down the names of the parties, as to do so would give needless pain, by revealing the illegitimacy of several persons who may some day come to a good position in life.

The following note was copied from the brief of a learned friend who was engaged in the case :—

The Judge \* sums up :—

"The learned Counsel says you ought to find for the Defendant. Well, you may if you like ; but don't you go and do it because he asks you. He asked me not to leave the case to you at all ; but I mean to.

"Very well ! now, what are the facts ? The Defendant admits that he promised to marry the girl ; of course, if he's a man at all, he can't deny that ; and his Counsel says he is a fool—very likely, but what then ? Lots of people are fools ; but they marry. Then that's no excuse for him. Next, the Defendant says the Plaintiff wouldn't have him ; she says she would ; which

\* Mr. Justice Brett, afterwards Lord Esher, M.R.

Scintillae of 'em do you believe? He has three  
Juris hundred a year—and—and—well, she's  
a woman; there! She don't dislike  
money, you know. This is an action  
to get, what? Why, money, to be  
sure; and Defendant's money, too,  
mark that. She can't bring an action  
for the man; and I can't order specific  
performance of the contract to marry,  
because the law says damages—that's  
money—are as good as a husband.

"First, then, there's the loss of the  
husband's income. Then the loss of  
the man; and, when you've settled  
the damages on these, there's compen-  
sation for the injury to the Plaintiff's  
heart—her feelings, you know.

"Now, here the learned Counsel  
says there are no particulars. He  
must say something, of course; that's  
what he's for. I don't know what he  
expects. He can hardly want a list of  
*regrets* at so much a dozen; *misery* at  
five shillings per hour, let's say; or an  
account of the number of tears, or  
pints of 'em, that the Plaintiff has  
shed over this business; the whole to  
be paid for at so much for the lot, with  
a reduction, perhaps, on account of  
Defendant's taking a large quantity.  
I wonder he does not say there are no

bought and sold notes to prove the Of Judges contract. I should know how to deal with that.

"Well ; you and I may not like this sort of action. Very likely we should prefer to whip a man of that sort down there. But we must be forensic ; and so you are to find your verdict for the Plaintiff.

"Now, then, what damages ? Don't give too much, for if you do the Court will set your finding aside, or the Defendant may be broken up, and the Plaintiff get nothing after all.

"What do you say ?"



I SHALL NOT SPEAK FURTHER Of Courts of those Superior Courts, whose reported decisions—especially those I have already cited—are, even by themselves, viewed with so much respect. Nor shall I occupy time in considering that Court of Piedpoudre, where, as Lord Coke says, your cause was heard and determined before dust could fall from your feet ; for of this expeditious procedure nothing, except the dust, remains.

But, since it is, unfortunately, the fate of junior Counsel—and of some others who should by this time be elsewhere—to attend the County Courts and Quarter Sessions, I propose to say a word or two concerning these seats of justice.

The County Court of to-day is, in name at least, the representative of a venerable institution ; yet it has but one feature in common with the County Courts of times now long gone by. It is still, as Spelman named its forerunner, *forum plebeiae justitiae*. It still justifies the observation of Blackstone, that "its dignity became much impaired when the bishop was prohibited and the earl neglected to attend it." No one can now enter one of these Courts



Scintillae without perceiving the episcopal and  
Juris baronial influences to be not merely  
absent, but to have altogether passed  
away. Suitors of a sort very common  
there to-day were simply impossible  
when the bench might be occupied by  
a Crusader, and a Christian.

Men in possession—*beati possidentes!*  
—the grand army whose battlefield is  
the room of the mock auction ; rogues  
who will discount any bill, if only it be  
obtained by fraud ; all these have, I  
know, their rights ; and the County  
Court is where of choice they go to  
seek them. May they receive their  
due, and something more.

Meanwhile the bishop is at his club,  
and the earl has gone to Epsom.



To the Quarter Sessions the barrister  
of one term's standing goes to make  
himself acquainted with the "law of  
the land," by giving lessons in it to  
those who administer the one by virtue  
of owning the other.

Should any one question the wisdom  
of learning in such a school, I will  
content myself with reminding him—  
for, doubtless, he has read them—of  
30

these words of M. Xavier de Maistre : Of Courts

*"De cette manière, on a le temps de s'affermir sur le terrain de la sagesse sans penser y être encore, et l'on y arrive par le chemin de la folie, ce qui en facilitera singulièrement l'accès à beaucoup de monde."* I trust that no one will think that this argument fails to justify the existence of Quarter Sessions as at present established ; for I know of no better reason, nor do I believe there is one.

\* \* \*

A chairman of Quarter Sessions will hardly ever reserve a question of law ; but he will generally leave it to the jury.

\* \* \*

Counsel should, in all Courts, use more of deference in proportion as the Bench have less of learning.

\* \* \*

It is a fault of cheap justice, as of gin, that it is purchased by many who were better without it.



## IT IS A CURIOUS PRINCIPLE IN Of Prisoners

Our law that prisoners charged with having committed a crime, are the only people in the world presumed to be innocent of it. But this great advantage is not conceded to them for nothing, since they are also supposed to speak falsely when they deny that they are guilty of the very offence which they are presumed not to have committed; and, therefore, if they should desire to assert their innocence under the sanction of an oath, this is forbidden,\* because they are further presumed to be addicted to perjury.

The truth is, that, although the law pays a prisoner the compliment of supposing him to be wrongly accused, it, nevertheless, knows very well that the probabilities are in favour of the prosecutor's accusation being well founded, and does not mean in any way to insinuate that he brings a false charge—it follows, therefore, that the presumably righteous are regarded with the greatest suspicion, and herein

\* This is no longer the case. Accused persons and their husbands or wives are now admissible as witnesses for the defence, by virtue of the Criminal Evidence Act, 1898.

Scintillae our law shows, perhaps, more of  
Juris practical wisdom than of logic.

Every one knows that, if there be a reasonable doubt whether a prisoner be guilty or not, he must be acquitted, whereas no such concession is made to a defendant in a civil action. It might well then be imagined that more verdicts would be gained by prisoners than by defendants ; but they who think thus have failed to notice that it is more important to a man to look innocent than to be *primâ facie* thought so. No defendant is brought up through a hole in the floor ; he is not surrounded by a barrier, nor guarded by a keeper of thieves ; he is not made to stand up alone while his actions are being judged ; and his latest address is not presumably the gaol of his county. In short, it is known that a defendant appears voluntarily, while no one doubts that a prisoner would run away if he could.

It seems, then, to me that to profess to think all accused persons innocent can amount to no more than our attempt to make believe that monarchs are all "most gracious," and mayors of little boroughs "worshipful." I might further instance the term "reverend,"

which, as applied to all clergymen, has been lately declared to be a "laudatory epithet"—a fair description enough of the word "innocent" as predicated of all indicted prisoners. Of Prisoners

Another instance of the favour with which the law professes to regard a prisoner on trial may be found in the care taken to ascertain his motives; upon which, and not upon his acts, his guilt or innocence often depends.

Thus, if I give a shilling to a beggar, I am at once called a charitable man; yet I have, perhaps, bestowed it upon him well knowing that he will buy poison, and so kill himself. No one, however, considers my motive; the action satisfies all. But, if I should take a shilling away from another, I am not instantly condemned as a thief: for it may be I thought it my own; or, perchance, I was mad—as to shillings. Here my motives are separated, questioned, reviewed, and considered; and if, among all my reasons for acquiring property, I acted upon one not "felonious"—whatever that may mean—I am acquitted; for "*non est reus nisi mens sit rea.*"

Now all this process is gone through, not because there is any real difficulty

Scintillae in deciding, but simply because we are  
Juris going to award punishment in the one  
case, and do not intend to bestow any  
reward—or anything more valuable  
than approbation—in the other. Our  
law is, in fact, a scheme for afflicting  
not all offenders, but the most con-  
spicuous ; and the length of a case will  
generally be found to be proportioned,  
not to the intricacy of the inquiry, but  
to the magnitude of the sentence in  
which it is expected to result.

For my own part, I will not venture  
to consider whether or not too much  
attention is paid to the motives of men  
when we are about to judge of their  
deserts ; but it is certain that many  
influential teachers of mankind have,  
looking to results only, estimated mo-  
tives at nothing whatever. I do not  
know a better example of this than the  
doctrines of that Gnostic sect who call  
themselves *Cainites*. These people, it  
is said, not only worshipped the first  
murderer—upon the hypothesis that  
he must have been virtuous because  
he was oppressed—but they also  
adored Judas Iscariot, for the reason  
that had it not been for his perfidy  
there would have been no salvation for  
Christians.



It is said by some jurists that our law looks upon an action as a fight between a plaintiff and a defendant, to be conducted, not, indeed, with scrupulous fairness, but according to the rules of the forensic arena. And certain it is—as you may read in Glanvil, if you will—that both a defendant and a prisoner might at one time elect to prove his right to land in the one case, or his innocence of a crime in the other, by knocking on the head, *coram judice*, any one having the temerity to come forward as plaintiff or accuser. But, while allowing this to have been so in the days of Henry II., we must remark that the position of a prisoner now differs from a defendant's, in this, that he is looked upon as having declared war against the State, and so must combat all society at once. His only chance now lies in his heels. He flies therefore before the multitude he cannot hope to withstand ; and thus we have a *prosecutor*, who comes, not in the place of the fighting plaintiff, but rather resembles those who give information of the whereabouts of some recognised beast of chase—the harbourer—a man soon passed by and forgotten when once the hunt is up.

**Scintillae** But, if an accused person is regarded  
**Juris** as a subject of venery, liable to be caught and killed at prescribed seasons—assizes, or sessions—he is also on that very account entitled to certain *law*, or privileges. Thus the prosecuting counsel is expected to pursue his prey not too viciously ; not taking advantage of every weapon he might use—as one does not follow a fox with guns and javelins, nor impede his flight by snares and pit-falls. He who would cross-examine a witness to character is as one who would harpoon hares, or kill salmon with a torpedo.

That a prisoner's wife may not be called, even by himself, is a beneficent provision designed by his enemies to save him from his friends.\*

The great gain of the prisoner in having all the community for his foe, in place of the one man he has injured, consists in the diffusion, and consequent weakening, of enmity which is its inevitable result. As Izaak Walton while impaling a frog would use him as though he loved him, so do our Courts manipulate a criminal. He is allowed to confess, if it please him : but he is no more driven to this form of suicide

\* See note p. 33.

than a stag is purposely chased over Of Prisoners a precipice ; and, indeed, he is often gently dissuaded from admitting his guilt, and encouraged to run for his life or his liberty.

It may seem strange that the people at large should at once accuse and judge suspected delinquents. Yet the English above all nations insist on this practice. So the King, for the country, prosecutes ; and the jurors, for the country, decide. In Britain the interest of the community is fairly guarded under this system, but it hardly bears transplanting to countries where—to parody an old adage—*Vox populi vox rei*.

If I have taken some trouble, and given more, in order to explain the theory of our law concerning the advantageous position of the accused when in the dock, I shall, I trust, be excused on account of the general interest of the subject ; for we know not where any one of us may be to-morrow, and, perchance, "*de te fabula narratur*."



**ONE OF THE MOST PERPLEX-** Of Telling a  
ing matters ever since the world Story  
began—and it must have been doubly  
difficult before—has always been how  
to begin. This problem daily presents  
itself to the barrister.

Now, in telling a story, it is abundantly clear that one cannot begin at the very beginning. If there be a heroine, her history is well started, and her path fairly marked out, before ever she is born; and yet one can hardly commence a narrative of how she was deserted by Lothario with a description of the stately amours of her grandfather and grandmother.

There is some advantage in beginning at the end and going backwards. You thus cover all the important points, and can stop as soon as the facts become altogether irrelevant; while you elude a great difficulty, because, as you cannot commence with a fact later than the last of all, you cannot be charged with omitting necessary preliminary matter.

But it cannot be disregarded that this has never been the popular logical habit; and it would, therefore, be confusing at first, even if fairly tried. There is nothing really puzzling about

**Scintillae** such a method ; indeed, it is simpler  
**Juris** to go from what has happened back to what caused it, than to feel one's way forward from cause to effect—as we sink more easily than we rise. But what is most likely to prevail against this system is the objection that the tale will decrease in interest as it proceeds—a great fault when we remember that it is often of less importance to reason well than to argue attractively. To take an example from the novelists : “ So they married and lived happily ever after,” though it is the end of a tale, does not make a bad beginning ; but the converse does not hold good, and thus no one could finish a story by recounting that, “ on a balmy evening in the month of June, two horsemen might have been seen slowly crossing a moor.” Should any Counsel so vaguely conclude his speech, I am sure a Judge,\* whom I could mention, would instantly exclaim, “ Might have been seen ! But were they observed, and, if so, will you proceed to tell me—and as briefly as you can—by whom, and what was the date ? ”

Priority of time is not, perhaps, so important a matter as is generally

\* The allusion is to Chief Baron Kelly.

supposed. What happens in June Of Telling a  
may well, if foreseen, have caused Story  
some event which occurred in the  
March before. And in such a case,  
the order of time would displace the  
real sequence of things. Your death  
causes you to make a will—though  
many people appear to fancy that  
death is accelerated by testamentary  
acts because it always succeeds them.

Perhaps the better way is to begin  
your narration at the middle of the  
story to be told ; not, of course, with  
the chief fact of all, but with one of  
some interest and importance. After  
this may come a digression into those  
events which preceded the one first  
noticed, and then a reverting to the  
course of the story.

I will illustrate my meaning by  
instancing the tale of Enid and Geraint,  
as told by Lord Tennyson.

First, he tells us that "the brave  
Geraint, a Knight of Arthur's Court, a  
tributary prince of Devon, one of that  
great order of the Table Round, had  
married Enid, Yniol's only child."

This is an attractive statement. We  
are at once prepared to enjoy a conjugal  
disagreement, and begin to wonder  
what it will be about. Therefore, lest



Scintillae we should lapse into disappointment,  
Juris this is the next thing we are told ; and  
we are just about to be informed of the  
result of the squabble, when the author  
cunningly affects to remember that he  
has neglected what he has chosen as  
the beginning of his story. Wherefore  
he suddenly breaks off, and says—  
“For Arthur, on the Whitsuntide before,  
held court at Old Caerleon upon Usk.”

After which statement he follows the  
life of Geraint, before he met with his  
wife, through nearly forty pages : de-  
tailing his meeting with Enid, the court-  
ship by battle—so usual in those days  
—and, taking “the Whitsuntide before”  
as his point of departure, brings down  
the narrative to the very moment when  
he began it. And he who reads the tale  
must, I think, admit that he could not  
tell it in better order.

Yet, let me imagine my friend Hevi-  
fee, Q.C., at the telling of this simple  
story in a Court presided over by the  
eminent Judge I have already alluded  
to.\* It would be more than his practice  
is worth to disturb chronological order  
as does the Laureate. He would begin  
at “the Whitsuntide before.” If not,  
he would prepare an ill quarter of an

\* See p. 42.

hour for himself, when, after his diversion, he reached that epoch ! The eminent Judge would probably strike out all the notes he had taken, and compel Hevifée to tell the whole story again, from what would most likely be termed "that most venerable English festival, to which, out of all order and convenience, you have already referred as a date of importance ; though you have not on that account forborne to place it subsequent to the succeeding Christmas."

Now, this custom of beginning at the beginning, as it is loosely called, is, to my thinking, a most clumsy device ; for all the early part of your narrative is taken up with that sort of tedious explanation spoken of by Mr. Shandy—if I remember rightly—as an introductory preface, or prefatory introduction : which, so far as we can see for some time, leads not more to one place than another. And, besides, many matters are, from the nature of things, contemporaneous ; as youth and innocence, marriage and repentance, virtue and indigence. Many events which it is necessary to detail happen unavoidably at the same moment of time ; and yet, such harm has this inveterate

Scintillae habit of beginning with the earliest  
Juris date effected, that ninety-nine people  
out of a hundred will conclude that  
what you first mentioned must have  
soonest occurred. The elegance of  
events moving along in parallel  
courses, or drawing gradually toward  
a place of meeting, is utterly des-  
troyed by this arbitrary assumption  
of sequence.

Most men, I have noticed, attempt to  
solve the difficulties in telling a story  
by telling it all at once. They tell it  
first in a sentence before any one can  
stop them. They, then, admit it to be  
unintelligible, and recount it at tedious  
length, after which they take it bit by  
bit, and embellish—as they think—each  
piece separately. This is always done  
through fear, first, that nothing less  
than the whole story can command  
sympathy, succeeded by a further mis-  
giving that when once told the story is  
too short to maintain its effect, and  
then comes a desperate feeling that  
the events require emphasising.

But my friend Hevifée never sets to  
work in this manner. He begins at the  
first date and concludes with the last.  
Safe is he, but not ornate. This method  
satisfies the eminent Judge. I do not

know that he admires it ; but he finds Of Telling a  
that all can follow it, and needs must, Story  
if he stands in the way of wanderers  
as with a flaming sword, or with a  
vigorous thwack or two urges the  
loiterer along the straight but narrow  
path. Many pleasant and profitable  
pastures are neglected ; many a flower  
by the wayside is passed unheeded :  
arid is the road, and dusty with the  
dust of dismal folios, yet is it the high-  
way which all may walk who will.  
The system I know is like the York-  
shire way of making coats, whereby a  
score of pieces of shoddy are cut at  
once to one pattern by a rotary saw.  
It adorns no one ; but it covers the  
nakedness of hundreds.

I could wish that the opening of a  
case were not quite so like the reading  
of a file of old almanacs supplemented  
by an aggregation of comment which  
has for the most part got stale by the  
time it is presented. No doubt the  
dates are the bones, without which  
there were no coherence in the figure ;  
but, as nothing in nature grows first to  
a skeleton and afterwards is clothed  
upon with form, so I think an account  
of events should come, as they come  
themselves, each imperceptibly to

Scintillae perfect the last, not merely to be supported by it.

What I have here set down I have written with no intent to incite any one to depart from the common usage in our Courts. For my own part, if, haply, I may say, "*Video meliora proboque*," I must sadly conclude "*deteriora sequor*."

**I** ONCE HEARD IT SAID BY A Of Examining in Chief  
skilful and successful advocate, now a Judge,\* that it is less difficult to cross-examine than to examine in chief ; and, although I fancy that few would have come to this conclusion, yet I think it a just one ; for it is far easier to put questions which may place a man in an unattractive position than so to conduct his examination as to make him show to the greatest advantage. And, indeed, the gift required seems to me to partake somewhat of that constructivity said to be so rare among our politicians. Many a ragged fellow has broken painted windows, though none but Albert Dürer could have made them.

It is true, nevertheless, that but little attention is bestowed upon the examining in chief of a witness, while many arts are exercised to produce an effect in cross-examining ; and this, because the one is so much more engaging to spectators than the other, and seems to have a more considerable influence upon the issue of the contest by reason of its results being more quickly perceived.

The examination in chief is, as it

\* Baron Huddleston.

Scintillae were, the founding of the witness ; the  
Juris fortifying him ; the circumvallation and  
provisioning of him for the siege that  
is to follow. You place him on a hillock  
by an allusion to his being a Justice of  
Peace, or an Officer in Her Majesty's  
Service. You surround him with the  
out-works of character, and barricade  
him with an enumeration of his clubs.  
His allies in peace and war are deli-  
cately suggested by a chance allusion  
to his uncle's being a duke, or to his  
banking at Coutts's. Around him you  
may draw the defences of holy orders,  
and before him erect the sallyport of  
the pulpit. You may conceal his weak-  
nesses, or skilfully turn them to his  
benefit, by the exercise of calculating  
caution, or opportune audacity. If he  
be of a hot temper, and prone to attack,  
you may even gain him credit for his  
violence by recalling to him some object  
generally disapproved, that he may be  
thought honourable when he rushes  
out to condemn it. You may gain for  
a man sympathy by putting to him in a  
leading question a list of all the misfor-  
tunes he has suffered. while he would  
tire and disgust every one should you  
leave him to relate them, as he would  
certainly do at the first opportunity.



A plaintiff or defendant should be examined with more deference and ceremony than any other witness in the case. They always feel that they are the chief actors, and are somewhat proud of having so behaved themselves as to have brought together a large number of people to listen to their mutual complaints and recriminations, and particularly of having afforded their Counsel an opportunity of display. For all these reasons—in addition to their everyday ones—they are filled with a huge notion of their own extreme importance ; as was that highwayman of whom it is related that, when the chaplain, on the way with him to Tyburn, said he feared they were late, he answered, " Never trouble about that, sir ; they can't begin without us." It is so much the habit of those in high positions to give trouble, that any one who succeeds in being tiresome thinks himself entitled to consideration.

Let a witness mention his hereditary advantages, for they will gain him respect ; but such as he has acquired for himself should not be enlarged on, since they shew him to be a dangerous competitor, whom no one cares to assist.

**Scintillae** It is often of advantage to question  
**Juris** an honest witness on matters concerning which you know him to be uncertain, although you have the means of proving them by other evidence. He will answer that he "believes it to be so and so," but will not swear it "positively." So, when you afterwards prove the facts independently, every one will think well of him for being so scrupulous in speaking of what nearly concerned his interest.

In examining a witness whom you believe to be of easy virtue—as must often happen to you—it is well to give him no more than the unavoidable openings for the exercise of disingenuousness, that the chances of his detection in the fact may be thereby diminished.

As a rule never allow a witness to state that which he is most anxious to mention—for it will surely be either slanderous or irrelevant.

An abandoned and audacious man is always thought better of than he deserves. If therefore you cannot conceal that your witness is a rascal, let him reveal it recklessly.

A very conscientious witness is usually tiresome, and never impressive. Any

*data* are a great help to him ; and a few letters given one at a time, or a thick ledger opportunely supplied, will often enable him to hesitate without being suspected of taking time to fabricate falsehoods, and to answer from his own recollection when he thinks he speaks from another's authority. Of Examining in Chief

All witnesses should be kept as far as possible away from subjects with which they are specially conversant ; for juries have no more relish than other people for being instructed. In every proof the witness gives of his own knowledge they are quick to see also an unmannerly discovery of their own ignorance.

For a kindred reason I would prevent a witness from attributing his acts—as some do—to higher motives than men are used to find in their everyday affairs. There is a reproach in the contemplation of unaccustomed refinement which gains no favour from the less cultivated. We sympathise only with those who dress like ourselves, whether the habit be of ideas or broad-cloth.

We always suspect the honesty of those who are actuated by motives which would not influence ourselves.

Scintillae    Perhaps as important a matter as  
Juris any is to look at your brief as little as possible while you examine in chief ; for a witness is more pleased to tell his story if he thinks it may be new to you ; and is not then embarrassed by the constant fear of giving an incorrect or imperfect version of what you appear to be reading.

Although leading questions are properly open to objection, yet, with a little contrivance, they may be asked unobserved ; as by separately putting in the shape of isolated facts, and not in their logical order, all the parts of the proposition you would suggest—always taking care to insert skilfully a few immaterial questions, in order to conceal the manœuvre.

**WITNESSES ARE OF TWO** of sorts ; professional and acci- Witnesses  
dental. And first of the professional witness.

Many have been the disputes as to whether our present juries are the historic descendants of the compurgators—those rash persons who pledged their belief in the innocence of our forefathers. For my own part, I think that the compurgator of old is to-day rather to be discovered in the professional witness.

The parallel may not be exact, but, allowing for the inevitable modifications effected by time, I think it will appear close enough to enable us to identify the one with the other.

If the compurgator always was drawn from the vicinage, while the professional witness generally comes from Great George Street, or Brook Street, this is hardly more remarkable than localising the venue of an action for an assault committed at Minorca by alleging the injury to have occurred in Cheapside.

I cannot ascertain that the compurgators charged anything for their oaths, though the professional witness demands so much a day for his

Scintillae swearing ; but this difference is no more  
Juris than we might expect to find as the  
result of increased civilisation. The  
real similarity, after all, lies in the fact  
that the testimony of both is evidence  
of opinion ; though we certainly now  
make this distinction, that whereas the  
question formerly was, " Do you think  
Gurth murdered Diggon ? " it now  
takes the form, " Do you consider  
Smith knew what he was about  
when he stabbed Jones ? " and  
whereas the answer used to be,  
" We think Gurth was in the right  
on't, for Diggon had broke his head  
with a quarter-staff," it now runs, " I  
state it to be my deliberate opinion  
that Smith was suffering from acute  
cerebral disturbance, such as recent  
contact between his skull and a brick  
might produce in one inclined to *petit  
mal*—as are all sinners."

✓ An intermediate link seems to me  
to be observable in the "common  
vouchee," once so useful in cases of  
entail. When disentailing became fre-  
quent enough to afford regular employ-  
ment to witnesses, a class of persons  
rose to meet the requirements of the  
age : and I doubt not that had any  
man in the tenth century killed as  
56



many people in a year as a modern Of  
Railway Company does, he too would Witnesses  
have retained a regular contingent of  
compurgators to excuse him. And  
surely they who, by means of a pocket-  
book and a "hypothetical tenant,"  
ascertain that a square mile of property  
in a populous city is worth nothing at  
all, could have sworn conscientiously  
that Robin Hood was a profitable  
keeper of game to his liege lord the  
king, in his Majesty's forest of Sher-  
wood.

I would not, nevertheless, be sup-  
posed to intend that all doctors, who  
depose to the insanity of a defendant,  
have any desire to make a madman  
where they fail to find one ; and I  
have no doubt that many valuers are  
convinced by their own arguments that  
two and two make four and a decimal  
fraction ; just as I think it probable  
that the crier of the Court of Common  
Bench grew to believe himself the  
warrantor of real titles to half the land  
in the kingdom.

The professional witness is rather to  
be regarded as belonging to that class  
of devotees who acquired the name of  
stigmatists, by reason of their so per-  
sistently imagining their hands and



Scintillae feet to bear holy scars that at last they  
Juris produced them.

Accidental witnesses, generally, are quite honest, but are hardly ever unprejudiced, even on first entering the witness-box, and they always leave it rank partisans if their evidence has been of sufficient moment to produce cross-examination. Yet, if they are not cross-examined, they more often feel slighted than grateful. For an instant, perhaps, they fancy that they looked so strong as to discourage assailants, but it soon occurs to them that they were not thought worth the trouble of an attack.

\* \* \*

A witness who understands the effect of his testimony on the issue seldom gives it fairly. Perhaps few honest men are honest designedly.

\* \* \*

Much truth is spoken, that more may be concealed.

\* \* \*

Any one who appears reluctant to speak ill of those in whom he has no

peculiar interest, will not often be Of  
credited with sincerity. Witnesses

\* \*  
\*

Admissions are mostly made by those  
who do not know their importance.

\* \*  
\*

Perjury is often bold and open. It  
is truth that is shamefaced—as, indeed,  
in many cases is no more than decent.

\* \*  
\*

A nervous witness generally means  
to speak truly ; and seldom does so.

\* \*  
■

A professedly religious witness takes  
credit for so many virtues that he  
allows himself much licence in dealing  
with truth.

\* \*  
\*

It is characteristic of women that  
they think everything they can say  
to be very material, and, therefore,  
they never understand why any ques-  
tions should be put to them. It also  
passes their comprehension why they  
should be stopped just when they  
are about to inform the Court of the

**Scintillae** most important matter of all, namely,  
**Juris** what a man's wife thinks of him.

\* \* \*

Women are invariably angry in the witness-box ; for the rules of evidence happen to be peculiarly repressive of feminine conversation ; wherefore they look upon them as prominent examples of the laws designed for the subjection of their sex.

\* \* \*

Of children, perhaps, orphans are the more truthful witnesses.

\* \* \*

The value of all testimony is determined by a paradox ; for that which costs much is worth little, while that given freely is without price.

\* \* \*

The last sentence contains much consolation for the professional witness, if he will examine it ; nor can it fail to gratify all others.

**IT IS NECESSARY TO ALL** Of Cross-  
Examina-  
tion  
who cross-examine to remember that the object of their art is to elicit that which the witness is either reluctant to reveal, or would not tell at all if he thought it to his questioner's benefit. It is clear then that your aim in cross-examination is to bring out the truth on certain points selected by yourself.

Now the thing easiest to be got in the whole world is the truth, if you set about it in the right way ; for to speak truth is to relate what has happened, while to lie is to tell what has not—and this requires the imagining of what never was, and the joining of it, more or less cleverly, to what is.

In nearly all men the imagination works but slowly ; and, therefore, it is well to get yourself answered quickly when you desire facts to be disclosed, but to give time if you want the witness to palter with the truth for the purpose of your showing afterwards that he did so.

If it be asked how one may get an answer quickly, I can only reply that a question suddenly put seems to hurry the utterance of the witness before it touches his faculty of reflection. Thus

Scintillae you may often hear a man, who has  
Juris answered a question, say, "Excuse me,  
but I did not understand you"—an  
assertion which a smile of incredulity  
easily represents as a falsehood.

If you suggest to an adverse witness  
a fact in his own favour, he will often  
deny its existence for fear it should be  
to your advantage.

A suggestion which you desire a  
hostile witness to adopt should always  
be made unexpectedly, otherwise his  
judgment will reject it at the bidding of  
his interest. There is a story told of  
Lord Erskine which may illustrate this  
position.

"Sir," said he very slowly to a man  
who declined to pay for a coat, on the  
ground that it did not fit him, "do I  
understand you to say that one arm  
of that coat was longer than the  
other?"

"I swear it most solemnly," replied  
the witness.

"What?" cried Erskine, with a  
sudden plunge into a hurried manner;  
"do you pledge your oath that, on the  
contrary, one arm was not actually  
*shorter* than the other?"

"I do," was the answer, given as  
rapidly as the question was put.

It is generally well to indulge a witness against you who desires to talk much ; for, when you have with affability heard all that he has to say, he will readily tell you all that you wish to hear. Moreover, his garrulity will be likely to offend the jury, since all are so fond of talking that they lavish much praise on silence in others, as poverty is lauded for a virtue, because every one wants to be rich.

\* \* \*

In all men we first notice their weak points ; and, therefore, you should, for a time, encourage the display of those characteristics of a witness which you soonest observe ; yet remember always that, as there is no spot of earth where you would not find something of value, if you should dig deep enough, so will much stirring up of any man at last reveal some good quality.

\* \* \*

\*

It is most difficult for a wit to be agreeable ; so, if you allure a witness into indulging his taste for comicality, you may be sure that he will offend at least one of a tribunal of thirteen.

Scintillae    A gruff man is commonly thought  
Juris honest. You should, therefore, play to  
such an one on the pipe of politeness,  
that he may look ill-tempered if he will  
not dance, and ill-mannered if he do.

\*   \*

Should a witness be naturally  
cautious and circumspect, there is no  
resource but to give him large oppor-  
tunities for reticence, that it may be  
taken for disingenuousness.

\*   \*

A timid question will always receive  
a confident answer.

\*   \*

When a witness called by the other  
side is inclined to behave to you with  
marked courtesy, I think it a mistake  
to discourage him, as some Counsel do.  
For, though the tenor of his evidence  
shall be against you, yet many will  
conclude, from his manner of giving it  
being the contrary, that he is addicted  
to insincerity, and will be likely to  
distrust him altogether.

\*   \*

It often happens that you have to



cross-examine your own witness, by Of Cross-  
reason of the other side having called Examina-  
him. In such a case it is wisest to tion  
conceal as much as possible the fact  
of his partiality ; and I would, there-  
fore, not cross-examine him as though  
he were a trusted friend, as is the  
common way. It is well to ask him  
many questions ; for he will be sure to  
answer favourably, and yet it looks  
more like a real cross-examination  
than if you should let him begin and  
finish his own story without interrup-  
tion, or with transparent assistance.

\* \*  
\*

Never torture a witness longer than  
he will wriggle in a lively fashion ; for  
it is not the pain but the contortions  
of the victim which amuse lookers-on.

\* \*  
\*

A compliment is a forensicanæsthetic.  
Many people will complacently under-  
go a fatal interrogation if they be well  
flattered all the while ; and more men  
are likely to be caught by a com-  
pliment to their ability than by a  
tribute to their virtue. Perhaps even  
the best of us would rather be feared  
than respected or beloved.

Scintillae    In cross-examining a claimant it is  
Juris    expedient to induce him to exaggerate  
his rights, to the end that all who hear  
him may feel their share in the wealth  
of mankind to be threatened by his  
large demands upon the common  
stock ; and that thus his claims may  
be adjudged by his debtors.

\*    \*

■

To show that your client has, through  
the Defendant's conduct, lost some-  
thing which he had before, will gain  
much favour for his suit ; but to prove  
that he has been prevented from obtain-  
ing what he had a right to acquire will  
help him little ; for who can tell from  
whose store the new supply would  
have been drawn ?

\*    \*

■

It is almost always safe to attack  
a witness whom the Judge allows to  
be hostile, and to punish him as  
sharply as you can ; since the admission  
of an overt act of enmity is, after the  
oath, a declaration of his untruthfulness  
and desire to deceive the Court. The  
jury at once feel that you are fighting,  
not your own enemy only, but theirs  
also ; and having, as it were, become

combatants by champion, are anxious to see you prevail.

Of Cross-  
Examina-  
tion

\* \*

\*

If you can make a witness appear ridiculous, it is never unsafe to do so ; for those in ludicrous situations receive no pity, even though they die there.

\* \*

\*

Yet I think it generally a mistake to laugh at any man for his calling in life ; as that he is a barber, a tailor, or the like. Few men do not think themselves more genteel than their business ; and it is ill joking before a jury on a common foible.

\* \*

\*

A severe manner may often be used with success toward a witness with whom the jury are inclined mentally to agree, but never against one with whom they sympathise. And it is not wise to try to deprive a person of this sympathy ; for you show the foolishness of those who bestowed it ; but rather enlarge upon how much of sympathy any one has, as a reason for denying him anything more substantial.

Scintillae    The knowledge that virtue is its own  
Juris    reward may well appear reason enough  
for giving to the deserving nothing be-  
side an admission of their goodness.



Sometimes it is not inartistic to affect entire belief in every statement made by an opponent's witness ; since nothing sooner begets scepticism than the contemplation of credulity.

We must, indeed, be very careful how we affect unbelief in statements made by even the falsest ; for they themselves must speak infinitely more truth than falsehood, and every one can see it.



To prove that any man is a notorious liar has its dangers, since it heightens the effect of every truth he tells.



Do not seek to sink a witness too low in the opinion of his judges ; for it is to be observed that we hardly ever feel unkindly towards those who are incontestably and hopelessly beneath us. An aspiring man is always disliked ; but the greatest sinner will meet with

toleration, if only he have art enough to be abject.

Of Cross-  
Examina-  
tion

\* \* \*

A display of magnanimity in dealing with the case against you, often begets a belief in the strength of your own ; for we are accustomed to generosity on the part only of those who have a superabundance for themselves.

\* \* \*

Many Counsel repeat every answer they obtain. A poor artifice for impressing a fact on the jury ; because it is but telling them that they can comprehend only those things which have been said twice. And, although it is often necessary that a jury should not understand your case, it can never be advisable to show them that you think they cannot.

\* \* \*

I have frequently heard many foolish questions put for the purpose of showing that a witness takes gin in his tea. I am sure juries generally look on that as an honest failing ; and I would suggest to those Counsel who cross-examine in this way, that they would

Scintillae damage a man far more by eliciting  
Juris his entire exemption from any conventional weakness, or commonplace vices, than by proving that he is not above them.

\*   \*  
\*

The bad habits only of the great advocates are observed and imitated by lesser ones—a versifier who can snooze with Homer is not therefore a poet.

## ALL THAT WE SEE AND HEAR Of Evidence

is but evidence, and, therefore, to be doubted by those who would reason well. This has led many to conclude that they are wisest who doubt most ; and some philosophers have sought distinction by maintaining that we ourselves are no more than evidence of our own existence, and that we fail to prove it. That these inquirers are right, I will neither assert nor deny ; but seeing that such evidence as they demand for their satisfaction, concerning probabilities, would not be required by our law were the best of them on trial for their lives, we may well leave their refined speculations out of all consideration.

So far, indeed, is the law from standing disputing on the threshold of what is questionable, that it boldly steps across it by assuming something instead of going about to prove it ; and this manœuvre it calls, very appropriately, I think, *presumption*.

"A presumption," says Phillips, in his work on Evidence, "is a probable inference which our common sense draws from circumstances usually occurring in such cases."

Yet the matters presumed are often



Scintillae such as common sense would hardly  
Juris lead us to admit. I have already  
instanced the presumption that every  
prisoner accused is innocent ; and it is  
not easy to see how common sense  
came to this conclusion, when it is  
notorious that out of ten men who are  
placed in the dock nine should be con-  
victed and punished. Surely, if common  
sense had the fixing of that presump-  
tion, it would be to the effect exactly  
contrary.

If a man stay away from his wife for  
seven years, the law presumes the  
separation to have killed him ; yet,  
according to our daily experience, it  
might well prolong his life.

The inscription on a tomb is admitted  
as evidence concerning the person be-  
neath it ; but I hope that this goes not  
upon a presumption that epitaphs are  
true. The effusive compliments of an  
heir only satisfy me that he came into  
possession of his estate. They are proof  
of the ancestor's subjection to death,  
but none of his other virtues.

The bearing of particular arms, or  
devices, was at one time held evidence  
that he who bore them had inherited  
them, as one of the family whose cog-  
nissance they were ; but—attending to

our common sense, as Mr. Phillips advises — we ought now, probably, to conclude that he who engraves griffins on his spoons stole the crest, if not the silver.

Perhaps the presumption of all most consonant with common sense is that one by which a man who has possessed land for many years is supposed to have a good title to it, because, if he had not, some one would already have taken it from him. Such a presumption rests on the fact of human rapacity ; and is therefore well nigh irrebuttable.

\* \* \*

The chief difficulty in arguing with most men, and, therefore, with a jury, is not to convince them, but to prevent them from too rapidly forming an opinion. And so I think it is a greater advantage to have the opening of a case than the reply ; for you then more easily influence the growth of faith when you control those matters which go to promote it.

From this readiness to decide upon little evidence, or none, arises a serious danger, that of wearying the jury by continuing to call witnesses, and the inducing a suspicion of weakness by

Scintillae improving your fortifications. It is  
Juris notorious that nothing likely to be true  
stands in need of much evidence ;  
from which it is argued that what is  
supported by many proofs is felt to be  
improbable. Moreover, it is a conse-  
quence of the fallibility of all human  
affairs that the more reasons we bring,  
the greater chance is there of a bad  
one's being among them. Hereabouts  
lies the sole merit of temperance. The  
last glass of wine may be no more  
dangerous in itself than the first one,  
but without it there were no mischief.

There is another disadvantage in too  
soon convincing the Court ; for it is  
well to bear in mind that what we gain  
quickly we part with on slight provo-  
cation, while we relinquish reluctantly  
those things which cost time and  
trouble to obtain. Many a worthless  
opinion is obstinately maintained be-  
cause it has been laboriously come by.  
Whole races of men live in miserable  
situations, for no conceivable reason,  
except that it cost them much pain to  
get there ; but the tourist, who travels  
at his ease, leaves even Naples without  
regret, though he is *en route* for Siberia.

It is then well not to be content with  
creating a favourable opinion only, but

to aim at producing it gradually, to the Of Evidence end that it may endure.

Proof should not arrive as violent winds which bend down the trees before them, only that these may spring up again behind ; rather should they come like a gentle fall of snow, to add their weight unperceived, to overwhelm silently, but to crush and smother all beneath them.



What is called *real* evidence—mostly bullets, bad florins, and nailed boots—is of much value for securing attention.

*"Segnius irritant animos demissa per aures,  
Quam quae sunt oculis subjecta fidelibus."*

This is true even when these exhibits prove nothing—as is generally the case. They look so solid and important that they give stability to the rest of the story : and so the French call such things *pièces de conviction*. The mind in doubt ever turns to tangible objects. They who first carved for themselves a Jupiter from a log of wood knew very well that the idol could do nothing for them, but it enabled them easily to realise a power who could. A rusty knife is now to an English jury-

Scintillae man just what a *scarabeus* was to an  
Juris Egyptian of old. I have seen a crooked  
nail and a broken charity-box treated  
with all the reverence due to relics of  
the holiest martyrs.



It seems a pity that what is called  
"hearsay evidence" is not allowed to  
be given in our Courts for what it is  
worth ; for though it may be freely  
admitted that what a man hears said  
of him, without denying it, may be  
assumed to be true, it is none the less  
likely that a good deal more truth will  
be spoken of him when he is away,  
than when he is present to be offended  
at the candour of his friends, and, pos-  
sibly, to vigorously resent it.

And though I am not prepared to  
say with "the Jacobin,"

*"Whatever is, in France, is right,"*

yet there is much more to be said for  
gossip than that the French Courts  
attend to it.

**A**LL MEN HAVE EVER SHOWN of  
great respect for him who has Sentences  
power to kill them, and they exhibit  
much tenderness towards those who  
have been distinguished by the magni-  
tude of their sacrifices—as Napoleon I.  
and Chief Justice Jeffreys. It is, I know,  
usual and conventional to pretend that  
these homicides are spoken of “with  
execration” ; but the fact that we are  
pleased to remember them so well goes  
far to disprove the sincerity of such  
professions of dislike.

The right to give judgment of death  
is—like riches, and all else that we  
value highly—conceded to few. When-  
ever there is a considerable insurrec-  
tion for the division of property, the  
insurgents assert their title to all the  
good things of this earth indiscrimi-  
nately, not less by plundering their  
fellows than by hanging and shooting  
them.

“Some sacked his house and cellars,  
While others cut his head off,”

says Peacock, with a nice appreciation  
of the rights of man.

Now, the people have never allowed  
a popular right to become a privi-  
lege without insisting that it shall be



Scintillae administered according to their liking.

Juris It happens that the mediæval taste was—as the English is still—all for hanging by the neck ; and this was to be done with ceremony, on behalf of the public. And, therefore, though it was a small matter if one man killed another, it became a serious affair if he illicitly made use of a gallows to do it.

So carefully, indeed, were these things regulated in some countries, that you knew exactly how low a bow to make to a nobleman by noticing the number of posts to his gallows. A four-legged gibbet was distinctive of a very great baron indeed, and a two-posted one proclaimed a man a superior person even among feudal lords.

This extreme punctiliousness was often embarrassing to the less exalted aristocracy ; for he was sure to have plenty of enemies who was not permitted to hang them. Nor did these unfortunate nobles venture to contemn the rules of the shambles by killing men in high baronial fashion, but sought by roundabout methods to get rid of those that troubled them, without in any way encroaching on the privileges of their betters. Thus the lords of Aragon hit on the ingenious



device of starving to death those whom Of they might not strangle ; and this scrupulous observance of the law was by law rewarded, for in 1247 it was, as Du Cange records, thus enacted for the benefit of those who had kept the commandments, in word : "*Si vassallus domini non habentis merum nec mixtum imperium, in loco occideret vassallum, dominus loci potest eum occidere fame, frigore et siti. Et quilibet dominus loci, habet hanc jurisdictionem necandi fame, frigore et siti in suo loco, licet nullam aliam jurisdictionem criminalem habeat.*"

These noblemen of Aragon, it will be observed, amended the defects of their feudal customs in precisely the same way as our Courts of Equity were wont to improve upon the Common and Statute Law of England. "*Fame, frigore et siti*"—these also were the methods by which suitors in Chancery were put into possession of their inheritance.



It has always been considered that those tribunals which impose sentences of death, fine, or imprisonment, provide satisfaction for the revenge of the public at large ; and, for that reason,

Scintillae probably. our law does not in criminal  
Juris cases allow the many appeals permitted in civil matters.\* He who had lost his bow or quiver by theft, might, with some calmness, submit to delay in getting it back, but he would certainly not have borne that the thief should be long withheld from his vengeance. Punishment for the guilty will not appease the injured man if it come not while his blood is hot with his wrongs. Lynch-law would never have been surrendered to a dilatory Court ; for the object of punishment is more to allay anger than to effect reformation. If I shoot in the leg a housebreaker as he jumps out of my window, I shall be fairly contented, though neither society nor the burglar is the better for my act.

But when a judge is allowed by one unquestionable decree to send a man to the gallows, it is necessary to provide him with cogent motives for the exercise of discrimination ; and surely no one can read without admiration the provisions of our early law upon this subject.

\* The Criminal Appeal Act, 1908, has modified the situation since this chapter was written.

"It is abuse," says *The Mirror of Justice*, "that justices and their officers, who kill people by false judgment, be not destroyed as other murderers, which King Alfred caused to be done, who caused forty-four justices in one year to be hanged as murderers for their false judgments. Sentences

"1. He hanged *Darling* because he had judged *Sidulf* to death for the retreat of his son, who afterwards acquitted him of the fact."

The *Mirror* then displays one by one the offences of other thirty-nine hasty or perverse justices, and throws in the names of another half-dozen or so, who also received severe lessons from their careful and humane king.



Some there are who, observing how light are the sentences now given, as compared with those formerly in fashion, are apt to congratulate themselves on the amelioration of human nature in these later days, and contrast their gentle selves with their harsh ancestors. Yet I rather find the reasons of our present lenity in the greater certainty and rapidity with which we now bring our criminals to judgment—

Scintillae for, if it be true that he gives twice who  
Juris gives quickly, a year in gaol now is as  
two were not long since.

\* \* \*

Criminals of a class seldom caught  
always receive severe sentences ; partly  
for example, but chiefly because they  
are individually supposed to have long  
broken and evaded the law. Punish-  
ments seem to have been ever propor-  
tioned not more to the enormity of the  
offence than to the difficulty of exact-  
ing the penalty.

\* \* \*

The chief difference between pris-  
oners and other people is, perhaps,  
captivity.

\* \* \*

He who commits a crime incurs a  
debt to society : and he escapes easiest  
who makes repayment at once.

\* \* \*

There is reason to think that we re-  
gard a felon, who has been punished,  
as an honest man with an exceptional  
claim on the public.

A good character precludes a man Of  
from taking advantage of many oppor- Sentences  
tunities by which others might profit  
without being blamed.

\* \* \*

A criminal compounds with his  
creditors, the public, by showing a  
fraudulent preference for the prison  
chaplain.

\* \* \*

An habitual criminal is one who pays  
compound interest.

\* \* \*

The highest penalty known to our  
law is in the nature of a *post obit* on  
one's own life.



**A**LTHOUGH IT MAY BE SAID of Advocacy that the object of a lawsuit is to obtain for some one his rights, according to the law of the land, yet, when we come to consider in what manner an action may best be conducted at the trial, it is necessary to remember on what grounds the laws themselves must ultimately rest ; since a confusion in the reasons for our complaints must inevitably lead to our stating them ineffectively.

"The only true and natural foundations of society," says Blackstone, "are the wants and fears of individuals." Were there, then, no wants and fears, society would be useless, and would soon cease to exist ; but of this I see no immediate prospect.

Now, an action must be brought for the purpose of satisfying the wants of some individual by operating on the fears of another. This, therefore, should be borne steadily in mind during the conduct of the case in Court.

And, first, the demands of the plaintiff must be stated, as formidably as possible as against the defendant, but not with such extravagance as to seem to jeopardise the rights of the public at large. The defendant alone is to be



Scintillae put in fear, not the judges themselves  
Juris —as I think I have already pointed  
out.

Moderation in those who supplicate  
us for favours seems a merit, because  
it is the equivalent to generosity in  
those we beg of.



In relating the misfortunes of clients,  
one must never forget that if he is to  
gain by his pathos he must not long  
be pathetic. Our own troubles interest  
us always, but we soon tire of the  
woeful chances of others.

It is also to be noticed that, while  
we all pity the victim of a sudden  
calamity, we rarely sympathise with  
those whose ill-luck is persistent.

Even when enlarging upon every-  
thing you are able to urge in your  
client's favour, it is well to convey by  
your manner that you are understating  
your case ; for by means of this arti-  
fice you gain credit for all that you are  
entitled to, and something more. This  
may be easily done in many ways, as,  
for instance, by omitting to state some  
favourable fact in opening your case,  
but taking care to prove it after-  
wards by evidence of your own, or

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to extract it from the opposite party Of  
himself. Advocacy



If you at once admit those weak points in your case which you cannot hope long to conceal, they will do you less harm than if you should allow the other side to discover and reveal them. I know that it is the theory of the law that what any one says against his interest must be taken most strongly against him ; but this doctrine itself rather diminishes the force of admissions, because the severity of the penalty on candour is likely to repress it, if it may be so disadvantageous in its effects ; and, therefore, they who confess willingly always in practice meet with some indulgence.



Since we are seldom allowed to choose what cases we are to conduct, it becomes necessary to determine how best to push forward an undeserving claim, or to submit an ill-founded defence. Now, it is of little use to have a good case if you do not take care to support it, not with plausible or ingenious arguments only, but with just

**Scintillae** ones—for there is nothing so true that  
**Juris** it may not be discredited by suspicious  
reasons being adduced to prove it. A  
proposition, however, which is essen-  
tially wrong may often be well-main-  
tained by unsound contentions, though  
it would be ruined by such as take  
truth for their basis. "It is an obser-  
vation," writes Burke, "which I think  
Isocrates makes in one of his orations  
against the Sophists, that it is far more  
easy to maintain a wrong cause, and to  
support paradoxical opinions to the  
satisfaction of a common auditory, than  
to establish a doubtful truth by solid  
and conclusive arguments. When men  
find that something can be said in  
favour of what, on the very proposal,  
they have thought utterly indefensible,  
they grow doubtful of their own reason ;  
they are thrown into a sort of pleasing  
surprise ; they run along with the  
speaker, charmed and captivated to  
find such a plentiful harvest of reason-  
ing where all seemed barren and un-  
promising. This is the fairyland of  
philosophy. And it very frequently  
happens that those pleasing impressions  
on the imagination subsist and produce  
their effect, even after the understand-  
ing has been satisfied of their unsub-

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stantial nature. There is a sort of Of  
gloss upon ingenious falsehoods that Advocacy  
dazzles the imagination, but which  
neither belongs to, nor becomes the  
sober aspect of, truth. I have met with  
a quotation in Lord Coke's Reports  
that pleased me very much, though I  
do not know from whence he has taken  
it:—*Interdum fucata falsitas* (says he),  
*in multis est probabilior, et saepe rationi-*  
*bus vincit nudam veritatem."*

The above passage should ever be  
remembered, as helping us to dis-  
criminate between the manner and  
methods suitable to be adopted when  
arguing before a jury, and those which  
it becomes us to assume and use in  
order to convince the mind of a Judge  
—at all events, if he be of the Superior  
Courts.

I have heard Counsel, and that often,  
who make no difference between their  
speeches at Quarter Sessions, or Nisi  
Prius, and their arguments in Banc,  
except that they somewhat modulate  
their voices, and clumsily affect to  
move to Lydian measures in the latter  
circumstances, but the process of their  
argument remains the same. The only  
distinction they seem capable of mak-  
ing between learned and unlearned

Scintillae tribunals is this, that they lay fewer pro-  
Juris positions before the smaller assembly,  
altering the quantity of their talk,  
without taking the trouble to improve  
it in quality.

And yet, although a mastery of the  
various well-known arguments, as *ad  
baculum*, *ad hominem*, and the like, is  
a very serviceable accomplishment, I  
regret that no one has yet discovered  
an effective *argumentum ad feminam* ;  
which, perhaps, would be of not less  
value, forensically considered, than any  
of the others.



It is doubtless of great moment that  
an advocate should appear to believe  
in his case, as he is then more likely  
to convert others ; but I think that  
most Counsel would be better advo-  
cates did they content themselves with  
simulating the belief instead of actually  
embracing it. The manifest appearance  
of a believer is all that is wanted ; and  
this can well be acted after a little  
study, and will not interfere with  
that calmness of judgment which it  
is well to preserve in the midst of  
uncertainties, and which does not  
90

appear to be consistent with much Of  
faith. Advocacy

\* \* \*

It is a common practice to conclude speeches with a burst of indignation ; but such a feeling concerning the wrongs of others is the shortest-lived of all the passions. I would rather touch last upon prejudice, for it endures like bronze, and is easily written on with the acid of epigram.

\* \* \*

In the course of a trial many things are believed or discredited, merely because they are likely or unlikely to have occurred ; yet the verdict itself is often only a fresh confirmation of the maxim, "*L'imprévu est ce qui arrive toujours.*"





## I SHALL CONCLUDE WITH A Of Maxims

word or two on Maxims, which are for centres having many doctrines revolving around them. It becomes them, therefore, to be fixed and certain ; but, for my own part, I can think them of not much more use in law than the proverbs of country people are in husbandry. Like "index learning," they may "hold the eel of science by the tail," yet the eel will find such means to wriggle that it were almost as well not to restrain him in any way as to hold him by one end only.

It is magnificently declared by our law that *there is no wrong without a remedy* ; but, perhaps, it were as just to remark that no remedy is given to him who has not a right to it. This manner of stating the rule is not, however, so attractive as that which the law adopts. It may often be imagined by litigants that they shall get what they have no title to, because they read *ubi jus, ibi remedium*, as being a complete proposition which does not negative there being some *remedium* where there is no *jus*. And, indeed, it has often happened that where one has shown himself in want of some remedial treatment, which he cannot specify, the law has found

Scintillae that he has a right of some sort, and  
Juris then it follows from the maxim that  
there must be given a *solatium* of one  
kind or another. It might be thought  
that if one could devise a new means of  
hurting another, it would be safe to  
exercise it ; but, as you will produce  
fruit by beating and bruising a walnut-  
tree, so if you do harm you will cause  
rights to spring up where before none  
were to be found. Or, as Lord Holt  
beautifully has it, if men will multiply  
injuries, actions must be multiplied too,  
for every man that is injured ought to  
have his recompense.



The maxim which, though rarely  
quoted, most concerns all who go to  
law, is "*caveat viator*."



"*Actus legis*," it is written, "*nemini  
est damnosus*."—Yet such is the ignor-  
ance of some who come to be hanged  
that they see not it is for their own  
benefit.



"*Rex non potest peccare*"—Ahem !

It is said that *he who comes into Equity* Of Maxims  
*must come with clean hands* ; and I suppose that the same rule must now apply in Law. The utility of the maxim is, that he who goes in clean will come out less dirty than he who is soiled from the first ; but, perhaps, having clean hands, it were better not to go into Equity at all. *Chi va al mulino s'infarina.*



The maxim, "*Boni judicis est ampliare jurisdictionem*," was probably invented to comfort the conscience when Judges were paid by fees on the cases brought before them. It is characteristic of a good General to extend the area of the country he can hold and plunder.



"*Debitores non presumuntur donare.*" Yet debtors do make gifts, and large ones ; often giving away the whole of their estates. I have noticed that bankrupts are men of very tender affections where their relations are concerned ; and they are so far unprejudiced that they often *prefer* a creditor.

Scintillae     It is a wise saying that "*Socii mei*  
Juris     *socius, meus socius non est.*" Persons of  
the sort here indicated are frequently  
to be found in our Courts as co-re-  
spondents.

\*     \*

■

"*Dona clandestina sunt semper sus-  
piciosa.*" Generosity is sure of so much  
praise that it is considered that no one  
will give away in the dark what he may  
lawfully part with. I mean not to say  
that there is not much secret giving in  
charity, but these donations are by  
nature a sort of bribes, and lose some-  
thing of their effect by being bestowed  
openly.

\*     \*

■

"*Summum jus, summa injuria.*" This  
is a more candid statement concerning  
law than one might expect to find in a  
law-book ; but it is useful, should any  
one complain of the imperfection of our  
law, to be able to point out that in its  
integrity it were even more hurtful. If  
we find "*partial evil universal good,*"  
then it is right to redress wrongs im-  
perfectly.

The books contain the maxim, "*Via* Of Maxims *trita, via tuta.*" I do not know that this has yet been alleged as a reason for not repairing a highway. But it would make as good a defence as many I have heard.



Much comment has ever been bestowed upon the legal maxims, and even now, perhaps, they are not all fully and clearly understood. I shall not here give further examples of them, as their elucidation is a matter of great nicety ; and I do not feel sure that I rightly interpret one or two of the few I have already presented.



THE PERIPATETIC PHILOSOPHER cannot well be indifferent to the influence of by-ways upon those who travel on them. There is something distinctly deteriorating in sitting on a gate ; but to get over it, to take one's way by a narrow footpath across a wide field, is to have entered, perhaps, on a long career of law-breaking. We may be sure that *le premier pas qui coûte* is often that which the thoughtless tourist takes on some gently sloping footpath.

A summer Circuit has, it might be thought, enough inconveniences already ; but it has hitherto remained unnoticed how much a dweller in a town, and particularly in the Temple, may injure his moral sense by wandering among scenes of pastoral simplicity. The wholly uncultivated hill-side, the spreading expanse of pathless moorland—these may be trodden without danger. It is the half-defined tracks of men, or sheep, that lead astray.

This subject is so wide a one that I may not hope to treat it adequately yet succinctly. It were possible to look at it historically, and to prove from example how ruinous to respect for the rights of others, how fertile in growths



Scintillae of communistic theory and predatory  
Juris practice, has been the habit of taking a  
country walk. And yet there are they  
who will recommend this to the young  
Barrister as a healthful, innocent and  
improving recreation.

It has been for years a subject of jest  
with the thoughtless that a witness in  
Thurtell's case described a person as  
"respectable" because he kept a gig.  
Yet this witness, we must believe, had  
more than a glimmering of right reason  
upon this very matter of the moral sig-  
nificance of footpaths. It is quite true  
—and beyond this point the common  
critic does not look—that the mere  
maintaining of a gig will no more than  
the proprietorship of a pew in the parish  
church keep one respectable. But the  
taste which leads a man to choose a  
gig is for something ; and the habitual  
use of such a vehicle cannot but be  
salutary. 'Tis a protest against va-  
grancy and error ; 'tis the act of one  
who sees the danger, as well as feels  
the toil, of walking. He who keeps a  
coach does so from a love of pomp ;  
and he who has a landau loves to take  
his ease even in towns, where there  
are pavements and broad roads not  
tempting to the breach of boundaries.

But he who sets up a gig is, in pocket, Of  
of the class pedestrian ; though he  
recognises and shuns the danger of  
that mode of voyaging. His gig limits  
him to the high-road ; it holds him  
safely in his appointed groove. Walk-  
ing is not by much more modest, nor a  
coach and six more indicative of settled  
habits. Therefore is a gig respectable ;  
and we may surely imagine that had  
Rousseau possessed a taxed cart,  
instead of being allowed (for States  
unthinkingly permit such poverty) to  
want other means of travelling than  
those he had of nature, he would for  
life have kept his way betwixt the  
hedgerows : would have met there no  
"Nouvelle Héloïse," and would have  
left no "Confessions" to delight those  
who like to look over the fence, yet hope,  
for themselves, to stay on the right side  
of it.

It must have happened to any one  
who takes account of his sensations to  
have noticed with what hesitancy, in the  
beginning of his holiday at a country  
place, he has stood upon the highway  
and regarded a little footroad across  
some meadow where the grass grows  
long—looking well at the width of it,  
and speculating on the length of time

Scintillae of its user. The narrowness of the  
Juris way serves to accentuate the rights of  
property, which, though, may be, it  
infringes them, it would appease by  
pointing to the triviality of its trespass.  
He observes how a footpath seldom  
takes the most direct way, though  
usually it is the straightest. It occurs to  
him that should he leave the high-road  
where he stands—a road consecrated  
by time and consent of parish authori-  
ties to the use of all the world—  
and should he pursue that other less  
hallowed track, he deserts the ways of  
citizens, and avails himself of the con-  
venient walks of vagrants, the shameful  
*sentiers* of tramps. A civilised man  
receives a shock when first he turns  
into a mere footpath, without kerbstone  
or gutter, with nothing to tell authori-  
tatively where it may lead him if he  
follow it, and which so skirts the  
property of others that he is ever  
treading over the boundary between  
communism and exclusive proprietor-  
ship. He has an uneasy sense that, if  
he be not in fact a trespasser himself,  
he is taking advantage of the wrongs  
of worse and bolder men. There lives  
not now in England, we may well  
believe, a man who would scruple to

use a Roman road because, perchance, Of  
it may pass over the broken hearth- Footpaths  
stone of Caractacus or Boadicea. It is  
only the recency of a wrong which makes  
it wrong at all. But he who can un-  
concernedly turn aside into a country-  
lane must have little left of the feeling  
of a good citizen ; and none but a gipsy,  
or a hardened tourist by profession,  
can use a bare footpath without some  
painful emotion. It requires that con-  
tempt for our law which only great  
learning in it can produce to arrive at  
the callous state of mind of one who  
was lately a Judge amongst us. Of him  
it has been said that, being taken knee-  
deep in growing corn or waving grass,  
he would offer to the capturing rustic  
a shilling, and say, " Take notice that I  
claim no right of way here ; and I offer  
you this money as compensation for  
the damage done by my trespass." Such  
dealing is impossible to him who sees  
in the permission of the law but a  
poor justification to set before an  
offended sense of rectitude, and to  
whom no amends whatever for a vio-  
lated right may seem the same thing as  
the observance of it. It is a rude con-  
science that can satisfy itself for an  
advantage taken of deviations from

Scintillae propriety by earlier wayfarers in re-  
Juris peating that "*communis error facit jus* ;"  
for this hideous maxim of our law is a  
direct incitement to the taking of that  
initial step in illegality which shall  
become a precedent for other wrongs,  
and so in time a starting-point of legal  
right.

Perhaps, however, to the quite un-  
thinking troop—who may use them as  
the cattle do—these footpaths are not  
so dangerous. They cannot be to any  
one without some ill effect, some blurr-  
ing of the edges between mine and  
thine, between the allowable and the  
illicit ; but it is chiefly to the thought-  
ful, the unemployed seeker after health  
or pleasure, that their use must be  
harmful. A donkey may travel them,  
and may emerge again upon the turn-  
pike no worse a donkey than he left it  
—for not every ass is so sensitive as  
Balaam's to the dangers of the road ;  
but to a man of urban habits this were  
impossible. Such a deviation from the  
ascertained and limited road, which is  
his because it is the Queen's, will  
destroy in him that unquestioning  
assent to the exclusion of the public  
from most land, except it be paved and  
lighted, which twenty years' familiarity

with Pall Mall has induced and confirmed. Let such an one be stopped by some stern tenant of newly planted acres just as he has taken ten steps upon an undedicated road, and his first excuse will betray the extent of his confusion of thought, the obliquity of his moral vision. He will give up his intention of proceeding; he will perhaps apologise for having come to the point where he stands; but he will at once claim a title to repeat his trespass in a contrary sense, and will be violent instead of contrite if it be denied that he have any right to go back again.

It were easy to go on from this point—when I have demonstrated the lurking dangers of all footpaths—and to show how these treacherous ways have their counterparts extending their reticulations over all the surface of human affairs. The philosopher may, if it please him, notice in the "agitations" with which in politics we have become so carelessly familiar only another example of the footpath, pushing itself sinuously but surely towards and across the fields of rightful owners—soon to be broadened and beaten into a public road, and at last handed over to the

Scintillae authorities of the State. It is for this  
Juris reason, we may suppose, that the nicely  
constituted mind shrinks from participation in popular movements ; for, indeed, they are but trespasses—in-  
vading, it may be, a pleasant region somewhat wastefully cultivated, but trespasses none the less. This is the truth, we may fancy, concerning that “ germ ” theory in legislation with which we were lately made acquainted. It might, indeed, be equally well known as the footprint theory : the more law-respecting raiders look anxiously on the ground they would enter for the vestige of a trespasser before them, and point to the trace of a wrong they have discovered as sanctioning those they would commit.

*Le premier pas* is always a *terminus a quo*.



**H**AIL, misty morn, whereon our Cras  
Law awakes Animarum  
From slumber, and with clear if veiled  
eyes,  
Does from her couch of wool refreshed  
arise ;  
Her powdered locks adown her  
shoulder shakes ;  
And for her Courts her chamber dim  
forsakes ;  
But first her homely aspect must dis-  
guise  
In coif, and ermine, and those regal  
dyes  
With which rude Force her strength  
majestic makes.

To thronging suitors—who her coming  
wait,  
With plaint of meditated wrong—her  
aid  
Fair Equity, Law's gentler sister,  
brings ;  
Hastening to meet them even at her  
gate,  
To still their fears ere yet they seem  
afraid,  
And guard the young beneath her  
ample wings.







MEDITATIONS IN THE TEA  
ROOM & BY THE HON. MR.  
JUSTICE DARLING

FOURTH EDITION

Order is broke in thinges of weight,  
Measure and meane who doth not flee,  
Two thinges prevaile, money and sleight,  
To seeme is better than to be.

THE EARL OF SURREY

## PREFACE TO FIRST EDITION

**T**HESE MY MEDITATIONS ARE the result of those hours of leisure of which public life is for the most part made up.

Since they are the production of a Member of Parliament they will, I doubt not, be allowed some value ; whether because all statements made by us are entitled to the respect they commonly receive, or because the true thoughts and views of a Member were never before publicly expressed, I care not to inquire.

I wish I could have gratified those of my constituents whom, in spite of their voting against me, I still represent, by putting my name upon the title-page of this little volume. But to have the courage of one's opinions is too dangerous a possession for me to claim—preferring, as I do, to have the good opinion of the world rather than to deserve it.





# IN LISTENING ATTENTIVELY,

1

as is my habit, to the debates, I find that I travel far away from the business in hand as a consequence of following too closely those who discourse about it. That I may return to the point in issue I withdraw to the Tea Room and wait until my thoughts, driven and scattered in all directions, come back from the voyages upon which they have been sent.

Meditations  
in the Tea  
Room

Though I do not remember to have been able to notice anything novel, or indeed anything at all whilst I continued on these journeys outwards, yet in returning pensively from some of them I have picked up curiosities which I had not noticed before. Why this should be so I know not. Perhaps it happens because, when following another, we go out fast along a single path which he knows by experience, and, being abandoned at the end of it, we grope our way back again by many devious ways. Perhaps it is because we always go backwards into the future, as *Passo*, the first *dei Passi* rode home from the Crusades when he bore the sacred flame which still flickers in Florence, keeping our eyes fixed upon the nearest portion of the past ;

so that the discoveries we make and hold are ever something short of the farthest point that we have reached.

In any case, to explore we must turn round. It seems to me that we find what is fresh in retracing our steps rather than in running forwards; as we open up a new world by ascending the Nile till we come to the oldest.

Wherefore I care not to be of those who profess to remark the latest footprint and start forwards from the toe of it. On a globe such a manner of travelling onwards may be neither so easy, nor so direct, as going backwards—as any thoughtful person, especially if he happen to be a geographer, will at once admit.

Prejudice apart, I can go very well to the east by turning my back upon Constantinople, and following the setting sun.

So when what we are pleased to call "the West" was discovered by Columbus he voyaged to "the East" of set purpose, carrying a letter to the Cham of Tartary, and only discovered America by unhappy accident. That he did, by taking this course, chance to run into so considerable an obstacle as a new world may seem to make against

the manner of journeying which I, and  
Columbus before me, have adopted. But, for my part, I see in it rather  
a proof that novelty exists all around  
us, and that we are as likely to make  
discoveries by taking one road as  
another ; while any path will lead us  
forwards, and back again, if only we  
walk long enough right on.

I  
Meditations  
in the Tea  
Room

In the complete cycle of eternity—if  
ever it be completed—the most distant  
future must touch and join the remotest  
past ; while the present is the antipodes  
of both—as any geometrician can prove  
for such as may doubt.

Events are of little importance at the  
time of their birth. We do not under-  
stand them—for at first nothing speaks  
plainly—and when they have learned  
our own language they talk only  
commonplace.

As to the future we know the name  
of it, and that is all. So much of it as  
we can see is in effect the present.  
For the rest 'tis good to gamble with  
in many fashions.

But a mere trifle in the past is often,  
by its position, of a real magnitude un-  
attainable by anything in all the time to  
come. Thus, to go back no further, we  
see that the existence of Adam and Eve

I  
Meditations  
in the Tea  
Room

is by the scientific treated as of vastly more interest and importance than that of all the millions in the latest census.

The first man who stood upon the earth was himself subsequent to the greatest of all wonders, and it is no marvel that for ages the world was content to look back.

We may make much ado, unreflecting, over the marriage of a king. But ask Mr. Darwin whether it is comparable in significance to the courtship of the earliest oyster.

We should learn more from the first monkey, he would tell you, than from the last man.

Wherefore, let us set out from this our advanced position, and return upon our steps without delay.



It occurs to me here that I had not before mentioned any point, advanced or otherwise, to which I had been led. It is a fact, however, that I had listened for hours to a dispute concerning the image and legend to be stamped upon the half-pence for use in one of our distant provinces.

What a world lies behind us if we start from half-pence !

**I**T WAS VERY NATURAL THAT the first man who thought himself of more consequence than his neighbours should have desired to be king and reign over them ; but it is little short of marvellous that they should have ever allowed him to do so ; for, as Algernon Sidney observes, " there is no natural propensity in man or beast to monarchy." Publicists generally refer the origin of kingship to some organiser and leader of a band of thieves and cut-throats, and suppose that, upon the success of their enterprise, they who had committed many crimes of treachery and violence submitted themselves to him who had perpetrated more—hailed him *primus inter pares*, and thenceforth obeyed him, and at length his grand-daughters. Although this explanation of the beginning of monarchy is less majestic than that theory of divine right which lingers yet about the world, it is I fancy the true one none the less. *Le premier qui fut roi fut un soldat heureux.*

It would seem then that the pillaging of neighbours was the first object of monarchical government, and all other States were, doubtless, organised to the same end. It is, however, commonly

said that the State was formed for purposes of defence and protection : and this may be in a manner correct ; for strategists are agreed in considering that such objects are best attained by a vigorous offensive.

I notice the basis of States not merely on account of the historical interest attaching to all speculation on such matters, but because a wrong opinion upon this subject is, as it seems to me, at the root of many of the sayings and doings of persons of a fitful importance and influence amongst us. To me it appears an error to suppose that all large bodies exist for the preservation of the small, and that strength is only to be exercised in order to the perpetuation of weakness. It is in observing the real reason for the existence of States, that we must recognise how foolish it is to affect sympathy for the little assemblies of men who, because they speak a language known to no people but themselves, imagine they are entitled to all the advantages obtained by those who receive as their due large concessions representing exactly that which they could take were they minded to be rapacious.



Whatever be the form of its government, a State is but a body of a certain number whose prejudices or interests do on the whole separate them less from one another than from the rest of the world. The unity amongst these people is not generally considerable, yet autonomy, or independence, they ever profess to desire above all earthly things. Severance from other nations, selfish and sacred isolation from those who dwell beyond a river, or a hill, this is what they really hope to obtain. But men whose own domain is well secured by the obstacles of nature are of all the most predatory and aggressive. Security from attack soon suggests the invasion of less protected districts. No people would trouble itself with any State organisation, if its only hope and purpose were to remain in contentment at home. The individual, the family, the tribe, may make up the nation ; but the soldier, the company, the regiment, are necessary to constitute the State. Then, since there must be a country to forage over, or no supplies can come to hand, the taxpayer, the collector, the treasurer, are as needful as the sabre and the gun. An apparatus for supplying the means

to act in concert must be provided ; and it is for this that we have tyrannies, monarchies, federations, and republics, with all their details of princedoms and duchies, their senates, parliaments, and assemblies, each with its appropriate incidents of cabinet, and cabal, caucus, and committee.

I know that it is the common view of lawyers that the State exists to secure the liberties of its citizens ; but ecclesiastics have been not less firmly persuaded that its chief purpose is to provide tithe, and oppress heretics. The people at large cannot be said to agree very well as to what is the true object of the State ; though each class looks for favour to itself, and is ready to complain loudly of similar pretensions in others.

Now it is the merest affectation to speak of the State as the means of securing liberty, however that word be defined ; for, as there can be no State without subjects, it is plain that freedom is exactly that which all States are designed to abolish. If, however, we once concede that we desire the "liberty of wise restraint," we admit that coercion is what we would have in the place of choice. Obedience,

though compelled by the gentle force of the humanest laws, is no more freedom than is abject submission to a conquering host. This is no reproach to civilisation ; only it is sometimes not sufficiently remembered by reformers.

Though those who have chosen to themselves rulers have deliberately agreed not for the future to do as they please, some do nevertheless constantly struggle to get back something of what by implication they have relinquished. These things they call their rights, and speak as though they had possessed and afterwards unjustly lost them ; yet the matter may be otherwise regarded, if one will be impartial. If the companions of the Vikings did not reserve their "rights of conscience," this is probably because they knew nothing of the pleasure to be derived from praying in a manner annoying to one's fellows ; but it is quite possible that they were aware of this pastime, and thought it unseemly. If they did not stipulate for the "liberty of the press," this is perhaps because the liberties later taken by the press were not known to them ; though it may be that they disliked such licence, and

resolved to forego it. Those who have erected for posterity a cathedral or a palace may intentionally have built them a prison as well.

I would not be understood to mean that the people have been unwise in fighting for charters, liberties, and settlements; yet the benefits they have most hardly obtained are, perhaps, not so valuable as is commonly supposed, and are never thoroughly enjoyed by any except the turbulent and litigious. The dissent of a dissenter makes, after all, but a small part of his life; a Quaker were little the worse for having to take an oath now and then; nor does a peaceful citizen often need a *habeas corpus*. Many of those incidents of our Constitution which some represent as its foundations are in fact no more than luxuries of complaint, enjoyed by reason of the general content which prevails. And this wide-spread contentedness itself is the effect less of freedom at home than of domination abroad. "A few paternal acres" will satisfy nothing but an ox.

If we as a nation have given up following each of us his own will, this can be made up to us only by our

taking away at least as much liberty from other peoples. Perfect anarchy may remain within its own city or country, but they who consent to be governed by the opinion of one or the majority among them, will repay themselves for their concessions at home by dictating elsewhere. When the French, after 1793, found that even republicans must follow some one, they strove to make the world follow them ; and the tricolour at once began to go the round of Europe. They had not, on the whole, that large measure of success which has attended the arms of England ; and, having for near a century been in the end unhappy in their enterprises abroad, they have not yet turned themselves to the righting of minute grievances at home. Had Villeneuve won Trafalgar, and Bonaparte Waterloo, I daresay there would now be salt-spoons and sugar-tongs in all the restaurants of Paris.

As to ourselves, we probably make more laws than suffice, merely to have the pleasure of widely enforcing them. We impose freedom on some who have not cared to seek it ; and although for public instruction we dredge up from the bottom of the ocean creatures

which at once explode in our hands, we do not remember the lesson when we would remove accustomed pressure from off other low organisations.

Moreover, the knowledge that we are rulers in so many lands leads us to make every-day use of what were of old the privileges of kings. The right by which our people claim to know the policy and opinions of the Government they do not rest more upon the justice of their deciding upon the laws they are to obey than on their responsibility for the effect which they suppose their precepts and example will have upon nations their dependents or disciples. It is as a "sovereign people" that they hold themselves entitled to lay at the foot of the throne their bills and petitions, with no other explanation than *C'est notre plaisir* ; to which the monarch meekly replies, *Le Roy le veult*. In England the Parliament is to the king what in France the king was to the Parliament. Perhaps it is strange that persons having resolved to decree something, should then throw upon another the responsibility of declaring their will to be their law. But men have ever sought the sanction of vague authority for acts which they consider



important ; and, while some would listen to nothing less than the word of an oracle, others have been satisfied with tossing up a halfpenny. Which of these processes the making of Acts of Parliament most resembles I leave to the decision of those who have to study and enforce them.

II  
Meditations  
in the Tea  
Room

I have now intimated sufficiently my view that the State is rather a fortress, mainly designed for offence, than a city for refuge. If, with old writers, we liken it to a ship, then with a man-of-war only can we make the comparison. It serves for us to live in, but cramps us sadly ; securely enough we can sleep, but soundly never ; discipline we bear, but love it no more than lime-juice. Meanwhile we can play the policeman, the missionary, and the bandit, as we choose. We can free the slave by enslaving his master ; we can dress whole nations in our shoddy ; we can dye that shoddy scarlet ; we can teach the goose-step where we please ; and cry " March ! " And all this throughout an Empire so extensive that in some part of it thousands are always sitting down to breakfast — provided they are not dying of hunger.



It is from this point that we may best consider the position of a statesman. To him the State is precisely what his army is to a general, and, as there have been "retreating generals" and "fighting generals"—both very valuable in their way—so have we had statesmen who, though commanding in chief, have spent all their energies in defending some little block-house upon the frontier of affairs while the enemy has been at the gates of their capital. So have we seen, since Commodus, those who preferred the common arena, and ignoble weapons, to all that higher strategy which their position required them to employ. Many have we followed, gallant as the warriors of La Vendée, or obstinate as that corporal who chose to be decapitated by a Chinaman rather than admit that the Queen of England is less directly descended from the moon than is the Celestial emperor himself. But few indeed are the names of those who, over all the field of battle, and through all the dust and smoke of the combat, have looked forth with calmness to act with wisdom. Numberless are the little commanders whose plan for ten campaigns has been simply to relax

discipline, to improve the rations, or to  
carry forward a banner because it is an  
old one.

II  
Meditations  
in the Tea  
Room

Why should we not . . .



**I** KNOW NOT WHERE MY REFLECTIONS would have led me—for indeed I was about to ask myself some momentous question, to which, I doubt not, I had a sufficient answer prepared—but at that instant of time, which, as will have been noticed, I have carefully indicated by asterisks, I was summoned to take my part in a division of the House.

When, after performing this ceremony, I returned to my arm-chair, I began to remember—with something of regret, perhaps—that in a space of twenty minutes I had pledged myself to a war with some dusky potentate whose name I could not recall to my memory—if indeed, I had ever heard it. Thus my thoughts, which I hoped I had marked in such manner that I could return and pick them up at my leisure, were nowhere to be found again. In vain did I at last remember to have arrived at the point, “Why should we not . . . ?” Beyond this all was waste, desolate, uncertain.

Ah, had I but been allowed to ask, and answer, that one question, who can say what results would not have followed? Let not any one conclude that I should have settled nothing remark-

able because, up to that point, no definite gain had resulted from my cogitations. By what right do you, who jog his elbow, complain that the astronomer discovers no new planet? In that moment it has passed across the heavens . . . perhaps.

But, did I design to abandon here the attempt to regain the place at which just now I had arrived, should I allow myself to accept each invitation to digression as it presents itself, what a chapter could I not write on division-bells! No; I am resolved to resume, if possible, the line of my interrupted meditations.

And yet, those division-bells. Tyrannous as are all bells, surely they are the most tyrannical. Even now they obtrude themselves upon me, though I have firmly determined to think no more about them.

Still they repeat that they will be heard, in spite of all my resolutions not to listen. For other alarums—to consider them for a moment only—I could find much to say in their praise. The dinner-bell, the passing-bell, and even the marriage-bells, all of them commend themselves to us, to our toleration, at the least; for are not dinners,

death, and marriage indispensable ?  
and do not men forget to dine, more to  
marry, and to die ? But why divide ?  
and why so often ? Is union grown so  
common, and so harmful, that we must  
all be seeking occasions for distrust  
and difference ? And are we so likely  
to forget to express our dissent that we  
must have bells and clappers to recall  
us from our inattention ?

III  
Meditations  
in the Tea  
Room

I will finish here this chapter, for I  
am resolved to tolerate in it no digres-  
sion, and I see that I am fast approach-  
ing some delicate questions relating to  
factions and their justification. Here,  
then, they shall not intrude. I banish  
them, I banish them to the other side  
of the page, which, unless you look  
there, is as good as the end of eternity.





**N**OTHING COULD WELL BE more interesting, nor more unprofitable, than to inquire whether among savages the best or the worst of them first formed for themselves some ruling power. Probably both sorts of men found their account in choosing chiefs and making laws. It is to be supposed that all see some advantage in having a Government, whatever be the form of it ; and it is to the credit of the English that they have contrived to believe themselves free, and to find themselves happy, under so many degrees of restraint as have at different times been imposed upon them.

The English Constitution has this supreme merit: it is founded on mutual jealousy and distrust, and not upon any of those refined but false theories which have dazzled and deceived so many other nations. "Si l'on veut lire," says Montesquieu, "l'admirable ouvrage de Tacite sur les mœurs des Germains, on verra que c'est d'eux que les Anglais ont tiré l'idée de leur gouvernement politique. Ce beau système a été trouvé dans les bois." I like this sylvan origin, and to trace its indications in the upas trees and other growths which even now overshadow

us. But to find a system of Government in the woods, what was it? The explanation is not far to seek. The essential part of our political system has over and over again been declared to consist in the checks provided to prevent any portion of the Government from acting for itself and carrying out fully its own views of what is expedient.

Sometimes this means compromise, at others coercion; it has meant civil war, but whichever form it may take, it is always part of our system.

In the woods, it may be, there was less compromise than now, and more coercion, or of a different sort; but, perhaps, men at that time only opposed proposals when they disapproved of them, and not because honour or consistency, as we say now, obliged them to differ always from certain other men. That a method which allows the King to declare war against the friends of the people, the Commons to ordain taxes for the Lords to pay them, and the Peers to reject bills which affect only the Commons, should have been found so agreeable to our natures, can only be accounted for by noticing that each has his chance of annoying

another. Thus a constant irritation is kept up, very stimulating to the body politic, which seems to find it—as Lord Shaftesbury, in his “Characteristics,” says some did the itch—“highly acceptable and delightful.”

IV  
Meditations  
in the Tea  
Room

I suppose it was in the woods, where they had observed the good effects of having now a fine day and then a wet one, that our ancestors conceived the happy idea of governing by party. Other nations might think a king, or a democracy, perfection for governing purposes—no one ever thought that half the people, or rather more, would invariably be in the right. But to be ruled first by one half and then by the other—first by those we esteem wise and good, and then by those we hold foolish and vicious—this was a fresh notion indeed, and every way worthy of woodmen.

It is the fault of some representative Governments that they have allowed many to persuade themselves that the people are righteously governed only when their own wishes, or those of the majority, prevail. Yet no active politician believes anything of the kind. The representatives of the people—being chosen to rule them and bind

them, as kings were chosen to do—have afterwards only that obligation to which an absolute monarch was subject ; they must act honestly, but are not bound to please. I have no doubt that this proposition will seem false to many who have the franchise, and who think themselves entitled to be consulted at every turn in affairs. Their leaders, however—even the most popular of them—have acted in accordance with the theory I have just expressed. Without staying to accumulate examples of this, I may mention the appeal which in 1874 Mr. Gladstone's Government made from the Parliament to the electors. That he had misunderstood the wishes of the nation, every one knows, and he fell from power to post-cards as a consequence of his mistake. But nobody imagines that he would have consulted the country at all had he suspected that it was against him. It is equally certain that Lord Beaconsfield would have more than doubled his influence on the Continent in the autumn of 1877 if he had dissolved the Parliament, and had received the votes of the majority at the following election ; but, knowing very well that of this there was no chance, he

preferred to govern the people by those who represented them, but not their opinions, rather than to give up either his policy or his place.

IV  
Meditations  
in the Tea  
Room

Whether or not party government is more absolute where the form of monarchy has been preserved, is a nice question. I am inclined to think that, where there is a Sovereign, Ministers may be more unscrupulous than where there is none ; for the theory that the Ministry are responsible for the advice they give to the Crown in effect converts that into mere counsel which else were an act done with their own hands ; and part of the popular wrath will be spent upon the King and his permanent executive, to the relief of his removable counsellors. This is not the less true now that the monarch is never in effect a member of the opposition. It was easy enough for George III. to take advantage of the unpopularity of the Coalition Ministry, for the term " His Majesty's Opposition " then meant a body who received more of his confidence than did his Ministers ; but when no protest from the throne is ever heard, whatever the Cabinet may resolve to do, it is impossible for the Sovereign not to share to a greater

extent the unpopularity of a policy than it was in the days when the people were told that Hanover was contemplated by the King as a refuge from his Ministers and the acts they did in his name.

The principal difficulty which now stands in the way of those whose lot it is to govern by means of a party is caused by the large amount of accord which really exists amongst all the present electors and their representatives, although they are divided into factions professing different opinions. Agreement in principle has never yet prevented politicians by profession from opposing one another, and it has seldom been difference of opinion only which has kept them apart. Pitt would have been a Whig to his death, as he was on first entering the House of Commons, but that there were just then too many Whigs of ability, and when he did not receive a place in the Rockingham Administration, he saw open to him a greater part as a Tory than as a Whig of secondary importance. There is not room in an English party for two men of remarkable abilities and of nearly the same age or experience ; as there is not place for two kings on one throne. If a man of



ambition begins party life without much consideration—as is generally the case—it is often a necessity that he shall change his allegiance, and carry his abilities where they are most needed, or can most benefit himself. It is no more a reproach to Pitt that he started as a Whig than to Erskine that he changed the uniform of the army for the robe of Chancellor ; nor was Mr. Gladstone more bound to remain a Tory than Fox was. If a party leader remain an Englishman we have all we can expect from the best of them. But though, as I have said, the chiefs will contrive not to be all on the same side, it is nevertheless difficult to set in array against each other large bodies of men who have no great gain to hope for in the strife, and no real hatred for those they have been taught to call their enemies. Now it is the fact that at present there is nothing a man can ask for at the hands of the Legislature which he is not as likely to get from one of our political parties as from the other ; although one of them may give freely from another's store, and the other grudgingly from his own.

It is a terrible thing to contemplate, but it is possible that the complete



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in the Tea  
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prevalence of liberal opinions may in time do away altogether with the Liberal party ; and it is indeed questionable whether this process has not already proceeded so far, by reason of the enlightenment and political education of every one, that it is high time to invent some disputable matters to replace the worn-out ones we received from our grandfathers, lest our boasted system of Government perish in general agreement.

It is easy to see that theology will form the subject of our next divisions ; but even these quarrels may be arranged, and the question what to divide about will present itself anew. Believing, as I firmly do, that it is of vital importance to the interests of our country that the Russells and the Stanleys, the Cavendishes and the Grenvilles, should continue their hereditary controversies after all the old topics of liberty of the subject, divine right, trial by jury, and non-resistance have been for ever laid to rest, I would suggest that science shall next become the prey of our politicians. I am sure that houses who have wrangled over the colour of their stockings, the curliness of their wigs, and the number and

position of the patches on their cheeks, will be at no loss to make cases of conscience out of the problems which natural science so plentifully presents. Besides the improvement in our foreign policy which would result from the withdrawal of it from the number of subjects criticised and explained on the hustings, there would be the further advantage to be found in the assistance which astronomers, and all other professors of the sciences and arts, could not fail to derive from learning the views of those free and independent electors who have never hitherto been abashed by any problem presented to them, no matter how new or abstruse.

It is as necessary to the working of our Government that there should be two parties in the State as that there should be King, Lords and Commons ; but it is not at all required that these parties should diverge upon questions of vital or even of considerable importance to the body politic ; and it were to be wished that, whether they are reduced to it by necessity or not, they would contrive to contend about matters of such a nature that the strife could bring no good to the foes of the country. Let it be recognised that

parties are designed for the purpose of giving to every one his turn in governing his fellows, which agreement renders impossible, and then divide into opposing bands upon any question you please—as whether an acid should be preferred to an alkali.

If it be said that the public would not interest itself in such questions enough to divide and do battle about them, I would point to that well-known loyalty which each party attributes to itself, and which I concede impartially to both of them. Should the chiefs of our present factions command it, their followers would interest themselves in algebra, or pronounce a firm opinion as to the composition of the sun, so soon as they had learned what declaration was expected of them on that subject.

There is one resource of English party leaders which those of other nations possess for the most part in a far less degree ; and it is so useful that we should be careful to use it economically : as when once employed it can never be replaced. One might despair of producing new combinations, so as to give each party its turn, were it not for the fact that, not having a universal

suffrage, we have the means of adding to one of our parties from time to time ; and so producing among the electors that balance which is effected in the House of Lords by the creation of Peers. When equilibrium has been produced as the result of our political see-sawing, things can only be set moving again by adding to one of the equalised forces ; and this increase has so far been always given to one party. Perhaps, however, when the considerable fund of low life, which happily is yet left to us, shall have been completely exhausted, we shall see the opposite party enlarged by the granting to wealth, or high intelligence, a greater share of power than that to which mere existence entitles every man ; for, it is probable that those who are comparatively able, or rich, will ever exceed in number all those who have nothing whatever in common with their fellows but a descent from Adam, large as this number is. Therefore when the suffrage has been for some time as universal as life I shall expect to see it become as unequal.

Let then the Liberals have a care, lest hastening the reduction of all classes to a level as complete and wide

as that of the waters in Noah's flood, they do but prepare for such a heaping of them up in mountains as we have seen ever since the moon has shone upon us and them alike. Let them be warned by that alacrity which the Tories have shown to anticipate the people's demand for a larger share in public affairs. Let them consider whether, whenever a lower stratum is added to their party, the upper layer of that party is not at once detached from it, and after a time joined on to the body of their opponents. When a dozen new members take their seats on your benches to the left of the Left, it is not unlikely that the Centre is not over-pleased with the crowding, and that the Right receives some fugitives, and succours them.

\* \* \*

There are some who so dislike government that they will support no faction when it is in power. This often makes a departed Ministry appear to have more friends than it has.

\* \* \*

If an opposition had many scruples it would never return to power.

To sacrifice one's honour to one's party is so unselfish an act that our most generous statesmen have not hesitated to do it. IV  
Meditations  
in the Tea  
Room

\* \* \*

In affairs no men are consistent except the dishonest.

\* \* \*

A Ministry, when it is certain to be soon displaced, should undertake some grand and impossible piece of legislation, or policy, that they may appear to fall in a splendid cause, rather than in the ordinary ignoble vicissitude of things.

\* \* \*

A Conservative administration is in politics what a "mixed occupation" is in war.





I HAVE THOUGHT SOMETIMES that we may hear sermons in our churches—and not the worst ones preached there—though there be no one in the pulpit. Indeed, I doubt if so much wisdom was heard inside the church of Stoke Poges as Gray contrived to discover in its graveyard.

It is a habit of mine, when there is much difference of opinion in the Palace of Westminster, to take a turn round the Abbey. Not that I seek the gratification of beholding once active opponents of my party now reduced to the silence of dust and the repose of marble. Not that I would find quiet; for, indeed, there are more voices about one in those deserted aisles than ever were in Babel. Nor do I go altogether to hearken to the great voice of Johnson, nor to catch the modulated tones of Cowley. I pass by all that remains of the glory of a hundred victories only to stay where blossoms the first of Tudor roses. Yet I am little of a botanist.

In fact all the roses of York and Lancaster, to say nothing of those of Shiraz, have no part in my coming to the Abbey, or pausing in my rambles about it, and I only mentioned them by

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in the Tea  
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way of showing that I have really visited the ancient Minster, and to indicate, in a manner in keeping with the scenes around me, that I have reached the point I had started for.



It is an excellent allegory wherein this kingdom is represented, which we see on the tomb of Henry VII.—a crown hanging on a bush. Whether the diadem of these realms fell among the gorse on the field of Bosworth, or whether we are to understand, as we look on the emblem of kingly power, that the thorns sprang up and choked it, you may—for you will—decide according to your prejudices. I know very well the idea of it which will best please some cynical Republican as he notices what it is that wears the crown. It will not occur to him that he has before him an image of the divinity that doth hedge a king ; and, for that matter, perhaps he has not. For me, I care not what it signifies ; 'tis a rare allegory, and I have my own notion of its meaning. Thank heaven, I can revere the crown as much when I see it on a bush as though, in all pomp, it surmounted . . . a cushion.

Let no one suppose that I came near

to writing another word, or that I intend here any disrespect to the cushion ; which, I take it, is neither more nor less than public consent made palpable and very becomingly represented. I profess that I have as much reverence for popular opinion in this shape as in any other of the many forms it from time to time assumes.

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It is well, I am sure, that we should consider sometimes this sculpture of the crown upon the bush ; for we are apt, when we see the regalia in all their splendour, to forget that the ermine does not stand upright of itself. In the chapel at Westminster we find a useful comment on the observation of Sir Thomas Elyot, that "*Apparayle may be wel a parte of maiestie.*"

Your *Highness* is right. The other part of majesty may be the will of the sovereign. Your *Lowlinesses* have reason. It may be a furze bush.

\* \* \*

Kings, like diamonds, serve many useful ends, and are yet most esteemed because of their rarity.

\* \* \*

Rebellion is the *prerogative* of subjects.



IT ONCE WAS A SAYING, popular in this country, and M. de Montalembert quotes it with approval, that "the public business of England is the private business of every Englishman." Yet, attractive as this statement must be to all those whose private business consists chiefly of interference in the affairs of others, I think that it is as fallacious and harmful as are most fine-sounding axioms. One might say, with not less justice, that the public-houses of England are the private houses of Englishmen. And perhaps this sentiment may some day serve to captivate a meeting of total abstainers, or a conclave of domestic drunkards.

The public business of England, even if it be the business of every Englishman, is his public business, and not his private business at all. He is not to consider that he has as good a right to be made intimately acquainted with the affairs of his country as with the doings in his counting-house; for, although any public act may affect him and his particular interests, it will certainly touch hundreds of his countrymen whose private affairs are as sacred as his own. An insistence on the teach-

ing of this maxim as a principle of government has before now, and lately, led to the establishment for a time of another rule, which may be stated thus, "The private business of every Englishman is the public business of England." That such a notion must, if generally received, postpone all foreign affairs, and all far-seeing policy, to the accomplishment of such purposes as commend themselves to the retail trader in grievances, and the manufacturer of discontent for home consumption, does not need proof in the face of instances still recent. If any one requires to be convinced, let him turn to the statutes of the last ten years, let him read the questions to Ministers and the debates in the Houses of Parliament, and, noticing how much they are occupied with "the private business of every Englishman," let him calculate the effect of what he sees upon the "public business" of a country which must certainly have a good deal, if only it were attended to.

People who are once persuaded that public business is the same thing as their own private adventures think themselves not less qualified to judge of the one than of the other ; and,

moreover, would conduct both upon the same principles. The tradesman who, in the County Court, has seen his neighbour compelled to retire behind a coveted party-wall, or driven from a convenient, but exclusive, pump, loudly proclaims the suppression of international trespass by means of international litigation. The vestryman who has beheld the police force of his parish reduced by two, and yet finds no corresponding diminution in the number of his spoons, insists that our armaments are an unnecessary burden to a country with which no one is at war. The right of Englishmen to know what is doing it is too late now to deny ; but it is most unfortunate that the admission of a man's claim to be informed of events should always lead him to suppose himself acknowledged to be able to understand their importance to him. If a physician tell me that I have a fever, I do not conceive that I am then called upon to prescribe to him what remedy he shall send me ; nor, if he propose one, do I dispute with him upon its merits while my disease hastens on its course. If patients were to become cavillers and disputants, we should find ourselves



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visited by a rhetorician whenever we had sent for the doctor.

But from our considering the public business in the same light as that which we best understand, it results that administrators are chosen, not because they are men likely to work wisely, or to commit few indiscretions, but for their skill in justifying blunders before an assembly which practically consists of the whole populace. Any one who can prove, like Pangloss, that each fresh disaster is but another step towards perfection, is more likely to be made a Minister than he who has judgment enough to avoid compromising situations. Even so, if each Minister had none but his own mistakes to explain, or to suffer for, it would be possible to have sometimes in power a cautious and intelligent statesman, though he were gifted with dumbness ; but, seeing that every member of a Government is liable to be called upon to defend measures, or negligence, for which he is in no way to blame, we are obliged to give our seals and portfolios to the fluent rather than to the thoughtful. Constant criticism by the public, coupled with their valued, but somewhat turbulent, procedure by meeting

and petition, necessitate the maintenance by the State of a company of professional apologists. Moreover, the existence in Parliament of an Opposition, whose business it is to appear always as the Devil's advocate, and to argue against everything which keeps them from enjoying the honours, emoluments, and patronage incident to office, must fill every Ministry with men whose sole recommendation to their associates is to be found in their readiness of speech and their freedom from scrupulosity.

The constitutional theory that the existence of an organised Opposition is justified by the obligation they are under to take office if their enemies are driven from it, must surely have originated when office was more dangerous, and less desired, than now. It is but a small consolation to the country at large to be assured that if Mr. A. wrongly turns out the Right Honourable Mr. B., then Mr. A. will be put in the vacant place, with a certain salary, and will some day be turned out again, a Right Honourable, with a certain pension. Perhaps endowment—a fashionable remedy now applied to many troublesome factions

—might diminish the injustice done by Oppositions in giving some chance to the conscience which they may be indued with, though no one has yet seen it at work. The rule which withholds from the Opposition all reward until they become Ministers in their turn seems not very just ; since it is admitted that they are all the while performing valuable services to the State, and that they are as necessary a part of Parliamentary Government as the Ministry itself. But, besides that deserving demagogues, worthy agitators, and thoughtful criticisers of the course of Cabinets may go down to the grave in some suburban cemetery, though they may have merited to sleep by Fox ; besides that they themselves may never have been rewarded for their labours by one ounce of public gold, nor their wives by one invitation to Court ; there is yet another, and, perhaps, not smaller evil. When the Opposition enters upon office, the public service must be less regarded than the claims of those who have long denounced the public servants, and, amidst the shuffling and puzzle-fitting which occurs, he who has successfully attacked the Postmaster-

General is likely enough to be gratified with the control of the Navy, or the direction of foreign affairs.

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Now, were the Opposition even more recognised by the State—had they their robes and staves of office, their places and their titles, their salaries, perquisites and patronage—would not there be more of dignity in their dissent, more of value in their support, more of reason in their consistency? If now the Opposition approve of a Government proposal, the Ministry is convicted of playing the game of its opponents, or the Opposition is jeered at by its foes, and pitied for incompetence by its friends. Whether the momentary agreement between the hostile factions may be to public advantage there is no public to consider, for all of them are triumphing in one camp or weeping in the other.

It would be not the least of the recommendations to a paid Opposition that many who are anxious to be out of office would be content to leave it; and some who have a talent for being always on the unpopular side could gratify their taste without injury to their position or prospects.

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The observations which, in the solitude of the Tea Room, I address to myself, are invariably of a noble and disinterested sort ; but—whereas I am capable of the utmost magnanimity—*myself*, being indeed extremely selfish, receives coldly most of my best advice. I constantly find that the beautiful and philosophic *egoism* which has been preached to me, and which *I* am prepared to accept, is by *myself* twisted into a grasping *egotism*, having in it no more of philosophy than has an heraldic motto. Thus it happened that no sooner had I, without a thought of my own advantage, made to myself the above remarks concerning the benefits to be derived from the institution of a subsidised Opposition, than myself slipped into its commendation of my scheme the suggestion that of such an Opposition I might hope to be one. In vain did I disclaim any such notion. No, said I to myself, the limits must be narrowed and jealously guarded. Merit only must be admitted into the Opposition, as into the Ministry. At this myself fell a-laughing at me, and I saw it was useless at that time to continue my argument.

# HOW SMALL ARE THE

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results produced by some of the grandest schemes of man ! Here has one of the most prized of our constitutional rights, in the course of its plenary exercise, produced nothing but a pain in the smallest of my toes. Yes, it has taken some hundred thousand signatures to cause me to sink into this chair instead of loitering in the lobby. For it was my misfortune just now to encounter a treatise in favour of the increased propagation of small-pox; which pamphlet—composed by a herbalistic medicine-man, and attached to a piece of paper, of the size and shape of a stair-carpet, and adorned with the signatures of all the blockheads of a country town—was being rolled along the passages to the House, which I chanced to be leaving. What is a human foot, though of the largest, opposed to the progress of such a mass as this ? How long might a Patagonian hope to stay the course of it ? For me, I did not delay it an instant ; earning thus, I hope, some gratitude from its authors. Onward it trundled, onward, and into that limbo where it shall harmlessly moulder away, unread, unheeded.



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What a machinery, I say again, to effect nothing but the crushing of one toe. Who were the worse, I ask myself, if this ceremony were abolished out of hand. Would the petitioners gain anything—even small-pox—if their petition were read, or if they could return the medicine-man to Parliament—as he doubtless hopes they will be able to do ere long—that he might there recite this composition of his?

Perfectly ordered representation of every man in a State may lead to not less injustice than does absolute tyranny. Indeed, a minority will often find its rights secured to it by a despot, for the very reason that it cannot even prefer complaints in the august presence of its ruler, from which presence the majority are also excluded. But when grievances may be freely stated and submitted to the general vote, it will many times happen that freedom to remonstrate against injustice will be held a sufficient reason for allowing wrongs to go unredressed. Indeed, I imagine that we should treat all the brutes with much less consideration and kindness than we now use could we only be informed by them of their views upon the position they hold among us.



The mere right to remonstrate need bring but little good to those who exercise it; and the right to control legislation and the acts of the executive may also be of but slight avail in the hands of people of small knowledge and many prejudices. In fact, such a right, which is all that the people can have in the most complete democracy, cannot amount to more than the power to reverse the course of Government by destroying every ruler in the land—an amount of freedom by which every despotism is necessarily limited. And, just as the excesses of revolutionists are invariably punished with harshness, so constant interference in affairs of State provokes reprisals, and does not the less incline rulers to resentment, because its recurrence happens to be guaranteed by a constitution.

It may well be doubted whether, if a man have most of those material advantages which it is in the power of the State to secure to him, he were not wise to decline the franchise should it be offered. So long as one must remain in comparative poverty, is it not mere folly to give up one's claim to pity and charity, in return for an acknowledgment that we can put into the

ballot-box as much as any one in the land ? An apparent injustice may be worth more than many a position of credit, and has before now formed the stock-in-trade of a whole nation. Nor are such riches the most transitory ; for he who has been oppressed leaves a goodly heritage to his children ; and perhaps it is due to the testamentary instinct that men bear real wrongs so quietly, content in handing down to their descendants a valuable property in the amends to be made them.



Is it not a favourite theory of certain philosophers that happiness is, in the main, equally distributed to every one, and that there is no loss which is not accompanied by some compensating circumstance ? And is this theory less applicable to the vicissitudes of politics than to the falling of an acorn from a tree before the snout of a pig beneath its branches ? Thus an extension of the franchise necessitated the diminution of bribery, and many a borough acquired dignity, yet grudged the price of it. Here bribery was probably forbidden less in the interest of the sellers than of the purchasers of votes. In

fact, the votes are still bought as effectually as ever, though they are paid for in a coin which men are more willing to part with than that of the realm—such as principles, faith and honour. A mob which cannot hope to obtain a shilling a-piece can still exact obedience to its whimsical dictation ; and this not less at the hustings than in times of revolutionary tumult, though less obviously. It is impossible not to perceive that in times when the multitude were not consulted on matters of State, they had their seasons of licence, and triumphed by turns over each of the elements of Government to which ordinarily they owed subjection. Such were the Saturnalia and the Feast of Fools. The Church was derided in the ceremonies of the Abbot of Unreason ; the Monarchy in the junketings of Lords of Misrule, and the May-day royalty of chimney-sweepers.

But does not Davus still pluck his master by the ear ? Of a truth he does, and compels him to hearken to most impudent diatribes and questionings. Are the Lords of Misrule now deprived of their lordship, or is their dominion confirmed and extended ? Let me confess myself of the opinion of those

who would attribute the vanishing of these mediæval pastimes to the spread of political responsibility. But, though it be true that there are no such ebullitions of popular nonsense as formerly, it is equally certain that there is at no time any repression of it. There are no seasonable overflowing floods of folly, perhaps; but a constant and fertilising stream of it none the less meanders through the land.

Yes, the Abbot of Unreason is represented in Parliament as, of course, he should be. I gainsay not his rights. Was not the Nabob of Arcot represented by seven or eight members? The Nabob, who paid no taxes. The Nabob, to whom the army of this realm was no burden, the laws of it no protection, the . . . Oh, what have I thought? what have I not written? On my word, I fear to push this parallel further, for the Nabob was disfranchised.

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Truly it is an awful subject, this of representation. Let us agree that every interest shall be represented. The individual, pure and simple—if there be such—shall have a voting paper,

though he have not a pocket to put it in. But concerning what shall he vote? Not about pockets, for he has none. Not about land except such as he may be buried in. Or let him vote that he have the land and the purse of his neighbour, in order to give himself a *locus standi* in the discussion of rents and taxes. This is what must happen if the franchise is allotted to individuals and not to their position. Perhaps it were well to award a vote to every man and another to certain properties; as in some countries is seen, where he who buys a certain estate obtains with it a seat in the legislative body, or a pew in the parish church. Is there more reason why every man's vote should be of the same power as another's, than there is for all voices being of one compass? Surely if the *sans culotte* is to have his say on the making of breeches, the wearer of them might be heard once in his native right as *sans culotte*, and again in his artificial character of *culotté*.

At present breeches, coats, and even bonnets, are, like the Nabob of Arcot at the time I alluded to, largely represented in the Legislature. And this is why I stopped so abruptly on the point

VII of disfranchisement. Can I not en-  
franchise my friend *Sans Culotte* with-  
out disfranchising the breeches he so  
longs to jump into ?

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After all, has a man any right of  
choice whatever, merely because he  
is in the world, seeing it was left to  
others to decide whether he ever  
should enter it ?

\* \*  
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Public wrongs are but popular rights  
in embryo.

**I**T WAS GOOD ADVICE THAT Pythagoras gave to philosophers that they should abstain from beans—which was to say the ballot. This counsel was probably given in the interests of philosophy and the professors of wisdom, yet that should not prevent us from seeing how greatly such refraining from affairs would be to the advantage of the public service.

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Meditations  
in the Tea  
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It may be doubted whether a philosopher ought even to be allowed to vote ; but certainly he should never be elected by the people to represent them, unless they deliberately wish to forego their share in the government of the country. For I cannot suppose that the multitude will ever guide themselves by any recognised philosophy, or that a philosopher will go by any other rules than the particular ones of his favourite system.

Tell the people that, according to the laws of eternal wisdom, and immutable justice, they are entitled to a vote and a pot of beer a-piece, and their sweet reasonableness were worthy the groves of Academe ; but call upon them afterwards to pay a fair price for these commodities, and none but the



VIII      laughing philosopher would recognise  
Meditations      them for his disciples.  
in the Tea      Nothing, if we may believe public  
Room      men, has contributed more to the ad-  
                 vance of this country than our habit of  
                 not pressing arguments and measures  
                 to their logical conclusions. To enthu-  
                 siastic doctrinaires this seems mere  
                 cowardice, or badness of heart. Rea-  
                 sonable men, who know that moderate  
                 purity is as sufficient in the conduct of  
                 ordinary affairs as in our supply of  
                 water, will be content with a reform  
                 which makes things innocuous, but  
                 leaves them still short of medicinal.

Who shall say that a few follies and  
excesses are not as natural, and, on  
the whole, as beneficial, in the life of  
a nation as of a man? Are not some  
wrongs the necessary occasion of vir-  
tues? Could this country ever have  
earned praise for its generosity if it  
had always been just? Beginning  
with so small a property, we could  
never have made a gift—such as that  
graceful one of the Ionian Islands—  
had we not first taken to ourselves the  
property of others.

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There are certain vices which are

far more attractive, even to an honest man, than some virtues ; and to a healthy and vigorous people it will ever be of less use to preach calculating rectitude of conduct, than to be satisfied with guiding a little those impulses which in their main direction are good, though the reasoning from which they spring is none of the closest.

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Meditations  
in the Tea  
Room

It has always pleased the English to assume an heroic character, and this is not consistent with methodical correctness ; or, at least, has not hitherto been thought so. When we have all read and practised the theories of Mr. Mill, and his followers, we may, perhaps, be a very worthy people, and, like all of that class, play but a small part in the world.

I console myself by thinking that it matters little to us what doctrines we feed on, so long as we do not alter the other and more substantial part of our diet. The country which deprives us fairly of our commerce will re-create a terrible horde of bandits. We shall hardly admit that we have no right to prefer our own interests to those of the great family of nations—as we have lately been taught—when we fairly

VIII      perceive that our philanthropy has lost  
Meditations      us some material advantage.  
in the Tea  
Room

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Those members of the upper class who, with the intention of reconciling working people to their position in life, proclaim the dignity of labour, while at the same time they attempt a sort of *renaissance* among the vulgar, do not seem to me to take the surest way to the end they have in view. A laborious aristocracy will be easily tolerated by the people ; who have reason to think all exertion unpleasant. So our upper classes are safe while they hunt, manage the roads and bridges, and drill the militia ; but let them occupy their time chiefly with the gentler arts and sciences, and they will conciliate fewer than they fancy.

Who would be governed by painters and decorators ?

\*      \*

Amiable socialists who talk of improving the masses up to the intellectual level of those above them, by way of producing contentment, do not understand the question so well as those whom they would instruct. No revo-

lutionists ever yet desired to level society, either upwards or downwards ; but many have used this name for turning it upside down.

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Meditations  
in the Tea  
Room

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A just distribution of the burdens of taxation will never please the greater number of the people, until there are in the State more very rich men than poor ones.

\* \* \*

The greatest good to the greatest number imposes on the majority so severe a discipline that they are content to take less than their share.



MUCH WAS NOT FORESEEN  
by those who first advocated  
free trade that has followed inevitably  
the prevalence of their opinions.

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Meditations  
in the Tea  
Room

I may, for all I know, have seen the  
above sentence in a newspaper ; but it  
is true none the less—and my dinner  
suggested it to me.

I suppose few will deny that of late  
years there has been less of insularity  
—some would say less of patriotism—  
amongst us than there was, and un-  
doubtedly there has been more foreign  
meat and drink for us.

Questions of cause and effect are  
always difficult or doubtful, and I do  
not generally care to hazard an opinion  
on such subjects, but the coincidence  
between our cosmopolitan philanthropy  
and our free breakfast-tables, covered  
with the food of every clime, seems too  
complete to be accidental.

That the modern popular affectation  
of citizenship of the world is due to  
a pabulum of some sort, I suppose no  
one will be inclined to deny. What  
the pabulum is may be a nice matter  
for controversy. You may look for it  
where you will ; but, for my part, I  
think it is to be found on the wharves  
along the Thames.

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Room

They who ate out of the same dish were in all times taken to be in some way attached ; and one cannot doubt that the souls of all the *convives*—which the ancients wisely held inhabited their stomachs—were brought into harmony by the sameness of their food. We know that all the lotus-eaters thought alike ; and we have been told of "the Caledonian" that so long as he drank claret he was "firm and erect"—an attitude which we may suppose his present potations do not assist him to preserve.

Then is it not natural to expect that an *olla podrida*, composed of ingredients from all parts of the globe, will produce in those who make it their diet a mixture of sentiments and sympathies such as now composes public opinion in this country ?

I like not to push a theory too far, yet the proportion in which we consume the products of foreign countries might, perhaps, enable us to calculate the amount of influence which they severally exercise upon our hearts and understandings. If this be so, a new and inviting field is open to statisticians ; and practical statesmen may see a fresh means of controlling popular



opinion in the manipulation of Customs duties.

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Room

Who will maintain that the embargoes laid by us upon the goods of our enemies did not aggravate our differences, and so prolong our wars? And by this light can any one fail to see a new and touching significance in the application of the phrase "the most favoured nation" to that people whose fruits we encourage ourselves to eat?

It admits of easy proof that in the days of enthusiasm for the abolition of slavery there was a considerable taste for "old Jamaica," and our sugar was not then made from the beet-roots of France.

The propagation of some epidemics has now been definitely traced to the importation of the germs of them in products from abroad; and he would be rash indeed who should pretend that some microscope of the future will not discover the embryos of Socialism in a German sausage, and a new scheme of party colour in a China orange.

That a country should be judged by its exports is inevitable; yet some nations have, doubtless, thereby suffered injustice. They will make few friends whose chief export is medicinal

IX rhubarb ; but disorderly troops of emi-  
Meditations grants seem to conciliate even less good  
in the Tea feeling.  
Room

If, as seems not unlikely, we feel more kindly towards other nations than they do towards us, is not this what we should expect from our partaking of their champagne, caviare, and macaroni, their olives, oranges, and bananas, while we send them in return only coal, cotton-cloth, and bars of iron ?

**A** DISTINCTION IS ALWAYS X  
made between our home and Meditations  
our foreign affairs in that separate in the Tea  
Ministers are responsible for the con- Room  
duct of each of them. Here, however,  
the difference too often ceases. The  
Home Secretary must frequently deal  
with selfish, unreasonable, and criminal  
persons and classes ; but he never meets  
with any whose conduct is so immoral  
as that of diplomatists of high rank ;  
he finds none so unworthy of credit  
and of confidence as the most respect-  
able potentates of Europe, because no  
one in England has such strong in-  
centives to faithlessness as they who  
may lose a throne by keeping their  
word. Because all foreign policy must  
rely for its success upon the force by  
which, if necessary, it will be supported,  
and not upon justice or reason, what is  
called international law is in effect  
non-existent—the dream of jurists  
seeking to enlarge their field of  
action. That municipal law exists is  
due—though Baron Pufendorf says the  
contrary—not to any convention or  
contract between murderers, thieves,  
and other members of society, but to  
the fact that these offenders are in the  
power of the rest of the community,

because they are, relatively, few in number. In hardly any country can an individual seriously wrong another without being made by the majority to suffer for it. The misdeeds of great Powers must, however, be avenged by those only who are hurt by them. If a strong nation unprovokedly assault a weak one, to what authority is there any appeal? To none; unless some States shall see a chance of intervening to their own advantage. Because there is no impartial human force above all nations, there is no law for them either, except in the text-books. A pirate is only "*hostis humani generis*" because he has but a little fleet, which the navy of no single State is too weak to vanquish.

The executive administering home affairs is strong enough to compel the observance of the ordinary rules of honest conduct; but it is seldom certain that the greatest wrong-doer abroad can be corrected.

This should result in a complete variance between the rules applicable to the conduct of business abroad and at home; and it is necessary, though unusual, to judge acts done with reference to the Himalayas, or the Nile, by a standard wholly inappropriate to

any event which can happen on the Cotswolds or the Severn.

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Meditations  
in the Tea  
Room

Our domiciliary policy may properly be determined by the consideration of what is most fair to all, for that can be enforced. But beyond our shores expediency must be our sole motive; though justice, and even generosity may be put forward, and, perhaps, coincide with it. By expediency I do not mean that which too many only know by this name. It is not expedient to invariably show—like the “treaty-breaking Lusitanians”—so little regard for our engagements as never to be trusted at all; but constant literal fidelity is equally undesirable, because when our enemies can be sure of the course which in any event we shall take, they cannot be embarrassed in their calculations as they would be were our attitude problematical. True expediency, however, is only to be detected after a nice examination of the questions at issue, and after a thorough consideration of all the effects, immediate and remote, direct and collateral, of any action we may take. It resembles, indeed, true selfishness; which is understood to include charity, liberality, and politeness — provided

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in the Tea  
Room

you enjoy the exercise of these qualities more than uncharitableness, meanness, and incivility. The opinion that honesty is the best policy—that is, the most profitable on the whole—has been more widely expressed than acted on : and if complete and undeviating probity is meant, this, perhaps, has never anywhere been tried. But there is no doubt that a policy into which an unusually large amount of honesty enters is, on utilitarian grounds, to be preferred to any other. Character is the best possession within the reach of those who have not splendid abilities ; but it is not so necessary to a great genius, who can easily find means to excuse any deviation from rules of prudence or counsellings of honour. Still there is so much danger in permitting freedom of action to any one, that all but the most commanding intelligences should be rigorously held to the observance of the common principles. Thus one act of perfidy may be excused if it result in the gain of a province ; and that though it create distrust of our word. But the next flagrant untruth should gain twenty provinces, or it will not be justifiable ; for, as original mistrust among our

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neighbours will have been increased  
in more than geometrical progression,  
so the object for which we incur it  
should grow in the same proportion.

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Meditations  
in the Tea  
Room

Inconsistency may sometimes be expedient. Thus it is well now and then to quarrel a little with our best friends, lest they presume on our complaisance. We may take an opportunity to assist an enemy—that he may hope for our alliance, and so refrain from entering into intimate relations with his well-wishers, or perhaps treat them with scorn or indifference. Besides, however, the immediate gain which the temporary abandonment of an accustomed line of conduct may bring, there remains uncertainty as to the policy of the future ; and though some may see in this nothing but harm, it is to be remembered in favour of devious statesmanship that there is in the world more of hope than of fear. No nation will at a serious crisis willingly offend a Government whose course is in doubt, even though that Government would not be very formidable when a declared adversary ; for many can do us much good who can do us little positive harm.

Rank injustice and wrong may also now and then be expedient, as it may



be necessary to show some, who think that we have abandoned certain weapons which we formerly wielded to good purpose, that our hand has not forgot its cunning. A civilised nation will not be respected of barbarians by reason of its civility alone.

Atonement for injuries which we have done is most dangerous to make, especially in circumstances where it may be supposed that fear or great caution was the cause of repentance ; but it may well be expedient to profess to repent of crimes never committed, as when we have profited by another's misfortunes but have not occasioned them. Though condolence and sympathy, unless they bring with them substantial offerings, are not often well received by the suffering, yet contrition has long been held as efficacious as reparation ; and, involving as it does something of humiliation, even men often prefer it to all other amends.

The chief difficulty in doing what is most expedient arises from the obstinate reluctance of men to admit that they have pursued a wrong policy ; and few who realise their faults already committed have the courage to take a fresh departure.

In pursuing a policy of expediency England has some advantages over other States, and should be studious to make the most of them. It is by some reproached to our Constitution that it disables us from pursuing a "consistent foreign policy." Now it is just here that I see one of its chief excellencies. We can lead a scrupulous public to commit or sanction gross breaches of faith, by persuading them that to break a promise made by their political opponents is equivalent to observing one given by themselves. We can reverse our policy by changing our Ministers, and at the same time aver that we have called so and so to the head of affairs because such a one had not rightly represented our views; the fact being, that we have altered our opinion as to what our interests demand. It is excusable in the Red Indian that he is puzzled by the non-observance of the covenants made with him by the United States, because he cannot be expected to understand that "ministerial responsibility" means national absolution from the performance of distasteful engagements; but it is lamentable that this doctrine is ignored by many in more favoured

countries, even to our own. "La perfide Albion" must remain entitled to that name so long as we possess a Constitutional Government; for perfidy, which was an accident under Philip of Macedon, is inevitable under Victoria. Though an absolute monarch may occasionally be treacherous—or gifted with a hundred other vices—yet few of these have not thought it disgraceful to have their promises slighted, even by themselves. But the dignity of a populace is not so easily touched, and a free nation will never be very fearful of incurring blame which, being distributed over many millions of wrong-doers, is by no one felt as personally degrading. The difference in this respect between an absolute and a limited monarchy, is exactly analogous to that which distinguishes a private merchant from a limited company. As there is a keeper of the King's conscience, whose office dates from the period when public acts were done at the will and pleasure of the sovereign—so now would there be a Minister doing such duty for the nation had the nation any conscience to be kept.

This matter is nicely put by Sir Francis Palgrave where he says, "The liability

incurred by the nation is refracted through so many media, that it is dispersed before reaching the foot of the throne."

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It merely remains to add that the media are changed from time to time—like the charcoal of filters—and they and the odium they have collected are thrown away together.

It is in a manner the misfortune of States that they must constantly exchange treaties and understandings, just as private persons send newspapers and Christmas-cards to distant acquaintances, merely to show that no rupture has yet occurred between them. It is not often unfair to disregard any obligation which may be insisted on as arising out of such a correspondence ; since the bad faith is in fact on the part of those who claim the performance of a promise made in mere courtesy. Besides this, a nation which makes any concession to another, and receives no real equivalent, is always in such a position that by municipal law the grant might be avoided on the ground of duress. Few reputations are so good as that of Joan of Arc, yet she has earned from France eternal gratitude, and from the Pope perhaps

canonisation, for having enabled her country to abolish the Treaty of Troyes—I hardly know who would blame the Empress-Queen for avoiding a treaty made with Frederick the Great; and the engagement to keep Napoleon on the Isle of Elba was hardly a good consideration to him for a promise to stay there.

Though immemorial usage would seem to show that but slight blame attaches to statesmen who in the interest of their country do not scruple to break the most solemn engagements, yet there has of late years been some complaint of the little regard paid to their word by sovereigns and their advisers. In truth, the telling of lies is a practice which, though some have condemned it, many have in all time defended; insomuch that Grotius, in naming the philosophers who have justified this form of deception, mentions Socrates, Plato, Xenophon, and Cicero, together with the Stoics "*qui inter sapientis dotes ponunt mentiri ubi et quomodo oportet.*"

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Honesty is disgusting to many men of fine feeling because it is represented as a good investment.

# ONE OF THE MOST DIFFICULT

matters in connection with a foreign policy is the forming of alliances, whether holy or profane. These, whatever may be the pretext for them, are really made to check the growth of political friendships between the allied States and certain others which they are suspected to be predisposed to consort with. The first point necessary to an alliance is therefore distrust; and it is because this element is seldom or never wanting between States that compacts of the most affectionate character are so easily made; and it is for the same reason that they so soon fall to pieces. Those whose interests really coincide will support each other without any formal agreement so long as the coincidence endures, and mere allies will never co-operate longer than suits their convenience.

Too much fear has often been felt in England at rumours of secret pacts binding certain sovereigns to give one another all help against all comers. In effect, such confederacies, being founded on mutual differences, are of little more utility than was the companionship of the collier and the fuller in housekeeping. Yet it is not easy to

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reject an alliance if another State propose it ; though much offence may be given elsewhere if a treaty be openly made. The safest course, perhaps, is to conclude the alliance suggested, and carefully to conceal it. If afterwards it becomes necessary to recede from the engagement, this will appear unrighteous to those only who suffer through such action being taken ; for no one is ever offended by acts which redound to his advantage, though some, to save appearances, may profess to regret their occurrence.

Moreover, he who brings to light an underhand negotiation, and refuses to be bound by his promises made in the course of it, will often be credited with repentance, and received among the most rigidly righteous with all those honours the due of sinners who recant.

He who is judicious will take care rather to offend the good and generous than the ill-conditioned and unscrupulous ; since the former will often forbear when they have the most just cause of offence, and will find in an attitude of dignified reproach all that satisfaction which only warfare and spoil can afford to the latter.



Where three are hostile to one another, there is always ground to expect an alliance of two.

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It very frequently happens that to make an enemy among nations is the surest way to gain a friend ; and if one does not fear to take this course, he may even turn several of his foes into useful allies. I hardly know a better example of this than is given by Colbert in his " Testament Politique," where he reminds—or perhaps informs—the king of the royal behaviour towards England, in these words: "Vous fûtes obligé cependant de reconnoître le Gouvernement présent d'Angleterre ; quoi que votre inclination et votre justice vous portassent à protéger celui qui en était le Prince légitime ; mais le procédé des Espagnols, qui prétendoient se prévaloir de l'aversion que vous témoigniez pour l'usurpation de Cromwel, et faire un traité avec lui à votre préjudice, vous fit recourir au seul moyen qui vous restoit pour vous mettre à couvert de leur méchante volonté. Vous lui offrites votre médiation pour terminer à l'aimable le différent qui était survenu entre l'Angleterre et la Hollande, et que

XI        vous étiez bien aise d'assoupir, parce  
Meditations        que vos ennemis en pouvoient tirer de  
in the Tea        l'avantage."  
Room

King Louis did us a good turn in this  
matter ; but who were his friends ?

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It is surely only fair to recognise in  
favour of evil intentions that they  
sometimes confer more benefits than  
the best.

**T**O BE UNJUST TO MOST MEN,  
is to appear generous to the  
smaller number.

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in the Tea  
Room

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To act fairly by our friends is the  
surest way to offend them. But less  
than his due will often satisfy an  
enemy.

\* \*  
■

Respect is only an accidental liking  
for those whose interests are in conflict  
with our own.

\* \*  
■

Peace has few charms for those who  
cannot employ it in celebrating their  
triumphs in war.

\* \*  
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The success of the teaching that we  
are not to be proud when we do right,  
is shown by our glorying in what can-  
not pass for virtues.

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The inequalities of rank are peculiarly  
gratifying to the lower classes, who  
delight in being able to attribute to  
social inferiority those misfortunes

XII      which often are the result of in  
Meditations      capacity or idleness.  
in the Tea  
Room

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What most recommends party government is that it enables us to slander our rulers without sedition, and overthrow them without treason.

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Reforms are more to be dreaded than revolutions ; for they cause less reaction.

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Many men do not change their opinions, because those opinions held too long change them.

## IT FOLLOWS FROM THERE

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in the Tea  
Room

I being no controlling power to which one State may appeal for redress of injuries suffered at the hands of another, that each nation must, so far as it can, right its own wrongs—which means inflict others. This process cannot long have gone on between States of unequal force without its becoming necessary to employ deception to obtain delay, to provoke attack, or to find a pretext for quarrels already resolved upon. The nice question when to forsake a friend, or at what point one should begin to love one's enemies, naturally called into existence a new science, and a body of experts skilled in its mysteries.

I shall say nothing of that part of diplomacy which consists in making truthful statements concerning past events, or promises which it is intended literally to fulfil ; for it is insignificant. But it is worth while to consider diplomacy in that wider field where bad faith, interest, anger, and folly, provide so much for it to do or to prevent ; and especially we may inquire whether our country is justified in using so little and so clumsily arts by which others have greatly profited.

We recognise that diplomacy is legitimate ; and—provided they effect nothing—we do not mind paying its professors liberally. Yet, should they gain us some advantage without having announced their intention of doing so, the public is straightway frightened and irritated. We do not object to our agents making use of falsehood in the conventional manner, but we are terribly shocked if it chance that they are believed ; because it is not possible to deceive a foreign Power without for a time misleading the public at home.

It is one—and not the least—of the difficulties in which a thoroughly Constitutional Government finds itself that it is unable to make use of diplomacy in its integrity. There is a sort of *escamotage* to which publicity is ruin—yet the *escamoteurs* of England are at every turn called upon to show that they understand their business by explaining its intricacies to their employers. Our diplomacy must all be conducted as it is upon the stage when we are called upon to study the wiles of a Richelieu or Alberoni. Much conversation may be had with the envoy from the foreign Power, and it is expected to be carried on in whispers

amidst conspicuous precautions against eaves-dropping ; but there must be no mystification of the pit and gallery. The asides must be loudly spoken, and we must have plenty of them. The envoy of the foreign Power of course hears them all ; though he has address enough to appear to listen to something else, to flirt with a woman, or to converse amicably with some gentleman of the Court.

Deceit—like another virtue or vice, according to circumstances—should begin at home ; for even if the public at large should chance to understand how advantageous it may be sometimes to pretend that we are misled by some trick of our enemy, they are yet too many to keep a calm countenance. It is therefore necessary for them to be deceived by their own negotiators, that they may not by their demeanour discover the truth to the enemy. But impatience to know the end, or to make it, too often prevails over every other consideration ; the seed is dug up that the process of vegetation may be explored, and the fruit is lost which otherwise had come in its season. That we should not be deceived, and that often, is impossible ;



for foreigners we cannot compel to take us into their secrets, and that we can make a few of them tell us something is an excellent reason for many of their communications being untrue. Countless operations are open to foreign statesmen, by which the *al fresco* nature of our own statecraft does not allow us to profit.

When Cavour sent the Sardinian army to fight in our quarrels against Russia, we thought it very friendly of him, and perhaps a little eccentric, so we called it chivalrous. But probably not two men in Piedmont suspected more than the simple grenadiers of Britain, or the careless *voltigeurs* of France, that nothing but the crown of Italy was being won in the trenches of Sebastopol. Had the Italians been informed what they were to gain, it is certain they never would have got it.

Yet I would not choose to see amongst us any of that dinner-table diplomacy where a princess asks a monarch for a peach and a province in the same breath ; but if our people would extend to the conduct of public business a little of that faith which annually goes to the sowing of turnips,

the harvest would, I venture to think, repay them for their confidence. Although the suffrage stands now at a very genteel level, I am not convinced that a majority of the voters can afford any help in detecting the real meaning which underlies the ambiguous memoranda and despatches of kings and princes—even when these documents have been freely translated into English, and enriched with the comments of Fleet Street. Moreover, one of the main objects of diplomacy is to commit your adversary to all the consequences of a false move while silently taking measures to counteract it as soon as it is perceived. But a chorus of delight from a hundred platforms gives timely notice if we think we see the game of our opponents; and English statesmen are compelled to fence in a full light, while their antagonists circle about them protected by a dubious *chiaroscuro*.

The contempt in which our diplomatists have long been held on the Continent is to be traced to some extent to our dislike of subtle negotiations, and our talent for giving and taking hard knocks; but much of it is the plain result of our choosing to set

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at defiance the rules of the game we play. I do not doubt that some amongst us are not displeased if they read in Philipe de Comines how it was a common saying in his time that the English lost by treaties what they had gained by arms, whenever they met the negotiators of France—a fact which some writers have traced to the changeableness of our climate, by which they conceive that our character and all our institutions have been formed. It may be that the dulness and fickleness so often charged against us do at length begin to wear off—by reason, perhaps, of our frequent tours abroad ; for it is true that we have of late years made some show of skill in concluding treaties concerning beet-roots, ribbons, and light wines ; yet here we seem rather to have instructed our neighbours in political economy than over-reached them in wit.

But putting out of the question our national peculiarities of character, we can hardly hope with our present Constitution to equal in the art of negotiation those Powers whose government is in the hands of one or a few privileged persons. We recognise that, for offensive purposes, we are by land

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weak, and we do not hesitate to admit that they speak with reason who compare us with a fish, and bid us not interfere in the quarrels of such dogs as are not of the sea. Now between the armies of Germany and of England there is not more difference than distinguishes our force in diplomacy from theirs. And, though all agree that we are bound to copy their drill-books, their maps, and their helmets, no one has hinted that we should systematically study and imitate those works of the great masters in diplomacy, which almost every country in Europe has produced. If we have to meet in war a bold enemy or a timid, a cunning or a simple, we seek to adapt our strategy and tactics to the occasion, and do not complain of our adversary for fighting in his own way. But should we have to deal with a nation given to fraud and trickery in affairs, we walk into every ambush, and set none in return ; or, if some energetic officer do so unbidden, we blame him and discharge him, but keep the captives he has made.

Perhaps there were some comfort to be found in the reflection that in those manœuvres which, doubtless, were first

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invented by feeble States to enable them to preserve their lives against the strong, we are unskilled because we have no necessity to know or to practise them. But when the strongest nations are, as now we see them, the most accomplished in diplomacy, it is time to cease to console ourselves with anything less than a mastery of the science we have hitherto neglected. Without professing to enter minutely into the subjects upon which we need instruction, I cannot leave out of sight one or two matters to which it is indeed time that our attention were turned.

And, first, it must strike any one who has seen what has been passing of late years how important a part is played by those inventions termed "accomplished facts." The contention that all that occurs subsequently must have an influence on prior engagements, has never been so fully recognised as now ; though it is long since Seneca wrote that "*Omnia esse debent eadem quæ fuerint cum promitterem ut promittentis fidem teneas.*" Concerning the "accomplished fact," and how to produce it, whole treatises might be written ; but it is enough to suggest

that much accomplishes itself if a great Power will it so, and we can easily supply our diplomatists with this weapon so soon as they shall have learned how to handle it.

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Then, if there be any one thing profitable in diplomacy which we ignore more than another, it is humour. Never since the Locrians, having sworn to keep their compact as long as they stood upon earth and had heads upon their shoulders, put earth in their shoes, and emptied it out again, throwing away the heads of garlic which they had placed on their shoulders—never have treaties been so jocosely broken as now. While Berlin is a very centre of cynic wit—while jests fly merrily about the East,—England alone adds nothing to the fun. That we shall always be honest, even fairly so, in the midst of laxity and deceit, I cannot believe. My fear is that we may some day be tempted to commit robbery with violence. But surely it were better to cheat at cards or dice, laughing the while, than to play fairly till our stake is lost to sharpers, and then assault and despoil them on their road home with the plunder.

It is unfair to others that we let them



out-wit us ; for later we exact retribution for the injury our own stupidity has brought upon us—when, had we taken the trouble to be suspicious, we should have come to no harm.

If there be any remedy for our weakness in diplomacy, it is to be found, I think, in the extension of that power of party which is so admired a portion of our form of government. It was possible for absolute monarchs to avail themselves of those talents which formerly were brought to perfection amongst the little States of Italy ; and those whose battles at home were fought by mercenaries became free companions ready to wage the diplomatic wars of other nations. Free parliamentary institutions are incompatible with the employment of such aid as this ; yet we cannot expect Englishmen, prejudiced in favour of the faction to which they and their families belong, to strive by every artifice which a county election or a party division would call forth to support a policy they dislike for the benefit of a Ministry they would gladly overthrow. Only, however, let our respective parties govern abroad as thoroughly as they are permitted to do at home,



only let them be served as devotedly  
at every foreign Court as they are now  
in each municipal council, and English  
diplomacy would flourish as it never yet  
has done. Party government if good is  
surely best when most complete ; yet  
we, who boast of being its inventors,  
permit a Liberal ambassador to present  
the remonstrance of a Tory adminis-  
tration, while an American Republican  
will not allow a Democrat to send his  
letters by the post.

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THE MEMBER WHO CAN      XIV  
command himself will serve his Meditations  
party—and he who can command his in the Tea  
party will serve himself. Room

\* \*  
\*

A pure election is the result of one  
of two feelings—fear or fanaticism.

\* \*  
\*

To convince a poor voter by the  
common argument of promised reforms  
is merely to corrupt him with hope.

\* \*  
\*

No party will willingly complain of  
those grievances which its opponents  
are likely to redress.

\* \*  
\*

Civil war is ordinarily more excus-  
able than any other; for in such strife  
few are killed who have not quarrelled  
—and for the best of reasons—that  
their interests are the same.

\* \*  
\*

Men would be great criminals did  
they need as many laws as they make.

XIV            The most humiliating knowledge for  
Meditations mankind is that which tells us we can  
in the Tea    destroy nothing. We may, indeed,  
Room        change somewhat the aspect of things,  
              and vanish ; but time—which is eternal  
              —may restore all, even ourselves.

\*       \*

It is curious to observe how  
laboriously they here waste their time  
who have no belief in eternity.

\*       \*

Allies are but enemies having some  
common foe.

\*       \*

Peace is the slumber of nations.

\*       \*

Ancestral glory sounds their *réveil*.

“ **H**OW, IN THE NAME OF xv  
goodness, comes all this, or Meditations  
for that matter a single word of it, to in the Tea  
have anything to do with those half- Room  
pence which at the first you professed  
to consider ? ” may be asked by some  
one who can so long remember so  
small a coin.

How indeed, I reply ; except that, if  
you throw one of them into the air,  
this whole world of ours, and all  
thereon, will move to meet it, unless  
some one happens to be playing chuck-  
farthing at the Antipodes.

Such is the power of money !

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